Supreme Court, U.S.
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No. OFFICE OF THE CLERK

In the Supreme Court of the United States
October Term, 1993

STATE OF MICHIGAN, et al,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT AND APPENDIX

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278 pp

QUESTION PRESENTED

Where The United States And The State Stipulate That The State Is In "Substantial Compliance" With A Prison Reform Consent Decree Entered As The Judgment Of The Court Pursuant To The Civil Rights Of Institutionalized Persons Act (CRIPA) And Has "Achieved The Goal Of The Decree By Assuring At Least Constitutional Conditions," After Eight Years Of Monitoring, Did The District Court Exceed Its Authority By Refusing To Grant The Parties' Joint Motion To Dismiss Portions of the Consent Decree?

LIST OF PARTIES

Respondent is the United States of America.

Petitioners are the State of Michigan; John Engler, Governor of the State of Michigan; Michigan Department of Corrections; Gwen Andrew; Thomas Eardley; Duane Waters; Don P. Leduc; Kenneth L. McGinnis, Director Michigan Department of Corrections; Dan L. Bolden, Deputy Director of Correctional Facilities Administration; John Jabe, Regional Prison Administrator for the Central Region; Pamela Withrow, Warden, Michigan Reformatory; John Hawley, Warden, Marquette Branch Prison; James Pogats, Deputy Warden of the Reception & Guidance Center, State Prison of Southern Michigan; Jack Bergman. The individual officials have been automatically substituted as parties when they succeeded their predecessors in office, FRCP 25(d); FRAP 43(c).

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OPINIONS BELOW

The opinions and orders of the United States District Court are not officially reported. A copy of the district court's order dated March 31, 1993 is reproduced in the Appendix, beginning at page 20a. A copy of the district court's order dated December 1, 1992 is reproduced in the Appendix, beginning at page 23a. A copy of the district court's opinion dated December 1, 1992 is reproduced in the Appendix, beginning at page 30a. A copy of the district court's order dated July 2, 1992 is reproduced in the Appendix beginning at page 40a. A copy of the district court's opinion dated July 2, 1992 is reproduced in the Appendix, beginning at page 47a.

The opinion of the Sixth Circuit Court of Appeals is reported as United States of America v Michigan, 18 F2d 348 (CA 6, 1994). A copy of the opinion is

reproduced in the Appendix, beginning at page 1a.

JURISDICTION

The jurisdiction of the District Court was based on 28 USC § 1345 and 42 USC § 1997a.

The opinions and orders of the United States District Court for the Western District of Michigan were entered on July 2, 1992, December 1, 1992, and March 31, 1993. Because the orders involved injunctions they were appealable to the Court of Appeals pursuant to 28 USC § 1292(a)(1). Timely applications for leave to appeal from the latter two orders were filed in the United States Court of Appeals for the Sixth Circuit and the cases were consolidated. The Court of Appeals' decision was entered on March 4, 1994. This Court's jurisdiction is invoked pursuant to 28 USC § 1254(1).

STATUTES INVOLVED

42 USC § 1997a. Initiation of civil actions.

> (a) Discretionary authority of Attorney General; preconditions. Whenever the Attorney General has reasonable cause to believe that any State or political subdivision of a State, official, employee, or agent thereof, or other person acting on behalf of a State or political subdivision of a State is subjecting persons residing in or confined to an institution, as defined in section 2 [42 USCS § 1997], to egregious or flagrant conditions which deprive such persons of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States causing such persons to suffer grievous harm, and that such deprivation is pursuant to a pattern or practice of resistance to the full enjoyment of such rights, privileges, or immunities, the Attorney General, for or in the name of the United States, may institute a civil action in any appropriate United States district court against such party for such equitable relief as may be appropriate to insure the minimum corrective measures necessary to insure the full enjoyment of such rights, privileges, or immunities, except that such equitable relief shall be available under this Act to persons residing in or confined to an insti-

tution as defined in section 2(1)(B)(ii) [42 USCS § 1997(1)(B)(ii)] only insofar as such persons are subjected to conditions which deprive them of rights, privileges, or immunities secured or protected by the Constitution of the United States.

(b) Discretionary award of attorney fees. In any action commenced under this section, the court may allow the prevailing party, other than the United States, a reasonable attorney's fee against the United States as part of the costs.

(c) Attorney General to personally sign complaint. Any complaint filed by the Attorney General pursuant to this section shall be personally signed by him.

42 USC § 1997b. Certification requirements; Attorney General to personally sign certification.

(a) At the time of the commencement of an action under section 3 [42 USC § 1997a] the Attorney General shall certify to the court --

(1) that at least 49 calendar days previously he has notified in writing the Governor or chief executive officer and attorney general or chief legal officer of the appropriate State or political subdivision and the director of the institution of--

(A) the alleged conditions which deprive rights, privileges, or immunities secured or protected by the Constitution or laws of the United States and the alleged pattern or practice of resistance to the full enjoyment of such rights, privileges, or immunities;

(B) the supporting facts giving rise to the alleged conditions and the alleged pattern or practice, including the dates or time period during which the alleged conditions and pattern or practice of resistance occurred; and when feasible, the identity of all persons reasonably suspected of being involved in causing the alleged conditions and pattern or practice at the time of the certification, and the date on which the alleged conditions and pattern or practice were first brought to the attention of the Attorney General; and

(C) the minimum measures which he believes may remedy the alleged conditions and the alleged pattern or practice of resistance;

(2) that he has notified in writing the Governor or chief executive officer and attorney general or chief legal office of the appropriate State or politi-

cal subdivision and the director of the institution of his intention to commence an investigation of such institution, that such notice was delivered at least seven days prior to the commencement of such investigation and that between the time of such notice and the commencement of an action under section 3 of this Act [42 USC § 1997a]--

(A) he has made a reasonable good faith effort to consult with the Governor or chief executive officer and attorney general or chief legal officer of the appropriate State or political subdivision and the director of the institution, or their designees, regarding financial, technical, or other assistance which may be available from the United States and which he believes may assist in the correction of such conditions and pattern or practice of resistance;

(B) he has encouraged the appropriate officials to correct the alleged conditions and pattern or practice of resistance through informal methods of conference, conciliation and persuasion, including, to the extent feasible, discussion of the possible costs and fiscal impacts of alternative minimum corrective

measures, and it is his opinion that reasonable efforts at voluntary correction have not succeeded; and

(C) he is satisfied that the appropriate officials have had a reasonable time to take appropriate action to correct such conditions and pattern or practice, taking into consideration the time required to remodel or make necessary changes in physical facilities or relocate residents, reasonable legal or procedural requirements, the urgency of the need to correct such conditions, and other circumstances involved in correcting such conditions; and

(3) that he believes that such an action by the United States is of general public importance and will materially further the vindication of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.

(b) Any certification made by the Attorney General pursuant to this section shall be personally signed by him.

42 USC § 1997j. Disclaimer respecting private litigation.

> The provisions of this Act shall in no way expand or restrict the authority of parties other than the United States to enforce the legal rights which they may have pursuant to existing law with regard to institutionalized persons. In this regard, the fact that the Attorney General may be conducting an investigation or contemplating litigation pursuant to this Act shall not be grounds for delay of or prejudice to any litigation on behalf of parties other than the United States.

STATEMENT OF THE CASE

A. The Consent Decree.

In 1982 the United States Department of Justice began an investigation of conditions in certain Michigan prisons pursuant to the Civil Rights of Institutionalized Persons Act of 1980 (CRIPA), 42 USC § 1997. Following extensive investigation and negotiation with Michigan officials, in January of 1984, the United States filed a complaint in the United States District Court for the Western District of Michigan against the State of Michigan and Michigan officials (Michigan) alleging that conditions in three Michigan prisons violated the constitutional rights of persons confined in them. The issues were never adjudicated because at the same time a motion to dismiss and a proposed Consent Decree

were filed. In order to avoid litigation and resolve the issues without making any admissions, and without any finding of liability or other determination on the merits (Consent Decree, App to Pet 88a-89a), Michigan and the United States consented to the entry of a decree intended to assure the constitutionality of the conditions of the named prisons. The Consent Decree (App to Pet 87a), covering medical care and mental health care; fire safety; sanitation, safety, and hygiene; crowding and protection from harm; and access to courts and legal mail was entered as the judgment of the court in July, 1984.

B. The State Plan.

The Consent Decree only required that conditions meet constitutional standards (App to Pet 88a-89a). Attached

to the Consent Decree as an exhibit, but separate from it, was a document Michigan developed on its own entitled "State Plan for Compliance" (App to Pet 109a) which specified detailed comprehensive measures Michigan intended to take, not only to assure constitutional conditions but, in addition, "to address a number of other matters designed to improve conditions of confinement." (App to Pet 99a). The State Plan contemplated improvements beyond what is constitutionally required, so the Consent Decree recognized that if the State Plan was fully implemented, that would necessarily "be adequate to bring Defendants into full compliance and thereby satisfy the terms and provision of this [Consent] Decree" (App to Pet 99a). However, because full implementation of the State Plan would include

improvements beyond what is constitutionally required, the Consent Decree specifically provided that compliance with the constitutional requirements of the Consent Decree did not require full implementation of all the terms of the State Plan (App to Pet 99a-100a):

> Nothing in this Decree shall be interpreted as requiring Defendants to specifically comply with any State law, or any other provision of the State Plan that does not implicate constitutional rights of inmates.

C. Michigan's Compliance, 1984-1992.

To fulfill the Decree Michigan committed itself to fund a multimillion dollar expenditure to restructure, realign, and upgrade the physical conditions of inmate detention at the consent decree facilities. Michigan's obligation included programs of new construction,

rehabilitation of existing structures, professional medical recruitment and extensive recruitment and training of nonprofessional, technical, and other supporting personnel, together with a reassessment of existing practices and procedures at the subject prisons.

Monitoring of compliance with the Decree was another obligation undertaken by Michigan (App to Pet 102a). A consent decree coordinator was hired by Michigan who, on a semi-annual basis, if not more frequently, has filed compliance reports with the Court. In addition, summaries of audits and other reports were filed with the Court pursuant to the State Plan and subsequent orders.

The United States had its own obligation to monitor and to enforce the

Decree. 42 USC § 1997. In an earlier appeal in this case, United States of America v State of Michigan, 940 F2d 143, 168 (CA 6, 1991), the Court of Appeals recognized that "the United States, with its unlimited pool of financial and capable professional resources, has aggressively and effectively pursued the implementation of that decree with Michigan within the congressional intent of CRIPA ... "

Compliance litigation has been vigorously pursued as chronicled, in part, in United States of America v Michigan, 16 FRD 655 (WD Mich, 1987); United States of America v Michigan, 680 F Supp 928 (WD Mich, 1987); and, United States of America v Michigan, 940 F2d 143 (CA 6, 1991). Numerous expert witnesses specializing in the conditions subject

to the Decree were retained by both parties to evaluate compliance efforts. Their reports were also made part of the record in this case.

On October 2, 1985, in addition to the parties' experts, the District Court appointed its own "independent expert" to report on Michigan's efforts to comply with the decree provisions. The "independent expert" has filed numerous reports reflecting his compliance findings throughout the history of this case.

Compliance hearings were held biannually for a number of years. In 1989, the Court changed the schedule for compliance hearings to one every nine months. Medical and mental health issues were raised at every other hearing. Sanitation, fire safety, protec-

tions from harm and legal access issues were addressed during the other hearing.

The Consent Decree encouraged the parties to settle compliance disputes between themselves, without the need for judicial intervention (App to Pet 105a, ¶ P). Thus, the parties have historically stipulated to the resolution of a number of issues, including findings of noncompliance and the remedies for such noncompliance. In fact, because the parties have resolved pending issues prior to scheduled hearings, no regularly scheduled compliance hearing has been held between October 1990 and April 1992.

D. The District Court's Excesses.

Despite the relatively amicable and effective working relationship between

the parties to this case, the United States and the State of Michigan, the record of this case reveals a history of the District Court abusing its authority by attempting to impose obligations on Michigan which exceed the constitutional requirements of the Consent Decree and by permitting the private parties in unrelated prison litigation to effectively take control of this case under the guise of calling them "litigating amicus curiae." Michigan was successful in overturning several such excesses in an earlier appeal, United States of America v State of Michigan, 940 F2d 143, 159, 168 (CA 6, 1991), where the Court of Appeals held that the District Court erred "in overly intruding upon the sovereignty of Michigan and the terms and conditions of the consent decree by materially extending and modi-

fying the consent decree" and by the imposition of "overly intrusive remedies" and the improper use of "a special master, independent expert or some extraneous participant." The Court of Appeals found that the Consent Decree is confined in scope by the limited purpose of achieving the goals of the enabling legislation, CRIPA, that is to enforce constitutional rights, and this Court's narrow definition of these rights as they related to conditions of confinement. United States of America v Michigan, 940 F2d at 155, 158, fn 11.

E. The Stipulation And Motion to Dismiss.

On April 29, 1992, because they believed that Michigan had substantially complied with the Consent Decree and that the goal of constitutional condi-

tions had been achieved, the United States and Michigan signed and filed with the District Court a "Stipulation of Dismissal as to All Issues Except for Mental Health" (App to Pet 61a), a "Joint Motion of the United States and State of Michigan to Dismiss Portions of the Consent Decree" (App to Pet 66a), and a memorandum of law in support of the joint motion (App to Pet 70a).

The parties outlined the facts reflected in the District Court record which supported their request and specifically noted (App to Pet 75a-77a):

> The United States' most recent compliance monitoring found no constitutional deficiencies in the areas of fire safety (Report of George Gray, February 25-27, 1991) [R. 1475], sanitation (Report of Bailus Walker, March 17-18, 1991) [R. 1475], medical care (Report of Charles Braslow, October 1991) [R. 1606], protection from harm (report of Eugene Miller, March 15, 1991) [R. 1475] or access to the courts. Examples of the Defendants' progress

> are numerous. Major renovations have been accomplished to the physical plant of the consent decree institutions, including the installation of integrated fire alarm systems and sprinklers, and Defendants have either finished or committed funds to finish plumbing and ventilation projects throughout the facilities. Defendants have constructed a new medical facility which has been accredited by the Joint Commission on Accreditation of Hospital Organizations. The level of violence is down, specifically because of defendants' actions (Miller Report, at 17). Therefore, on the basis of the United States' expert reports and after reviewing the Independent Expert's Reports, the United States concludes that the Defendants have achieved substantial compliance with the Consent Decree and State Plan requirements and have achieved the goal of the Decree by assuring at least constitutional conditions in the areas of fire safety, sanitation, medical care, protection from harm and access to the courts.
> (Emphasis added).

Since the parties agreed that the mental health issue should be retained, the parties also stipulated to vacating ¶ R of the Consent Decree dealing with

termination. The original language required compliance with all the terms of the decree before termination was sought (App to Pet 106a).

In its stead, the parties stipulated that termination of the Court's jurisdiction may be sought by either party as to any provision of the Decree when Defendants were in compliance with constitutional requirements (App to Pet 62a). This language was consistent with the basis for termination already inherent in the Decree and also with the decision by the Court of Appeals in the earlier appeal.

F. The District Court's Refusal To Grant Dismissal.

The District Court issued an Opinion and Order on July 2, 1992 which established a procedure and schedule for con-

sideration of the parties' joint motion for dismissal (App to Pet 47a, 40a). The Court agreed to the piecemeal termination of the Decree, but would not vacate the existing termination language as requested by the parties. Instead, the Court found that the termination language of the stipulation "substitutes compliance with the Constitution for compliance with the Consent Decree." (App to Pet 50a).

The Court required a current compliance report by the Michigan Consent Decree Coordinator on only two of the three consent decree facilities, Michigan Reformatory (MR) and Marquette Branch Prison (MBP) (App to Pet 54a, 41a-43a). As to the third facility, State Prison of Southern Michigan (SPSM), the Court believed that the out-

come of a different prison condition case, Hadix v Johnson, ED, Mich No. 80:CV:73581 (portions of which have recently been transferred to the same District Judge as the instant case, WD Mich No. 4:92-CV-110), might control. (App to Pet 57a-59a). Thus, the Court refused to rule on the parties' motion to dismiss the Consent Decree provisions relating to SPSM.

The Court also deferred ruling on the termination of the medical care provisions stating that they were "inextricably" related to the mental health provisions (App to Pet 56a) despite the fact that the Consent Decree distinguishes between medical and mental health care (App to Pet 89a-92a) and the State Plan specifically outlines in separate sections the medical and the men-

tal health provisions (App to Pet 123a-137a, 137a-152a). In fact, the State Plan identifies the specific medical care elements applicable to mental health care with the stated purpose to "further explicate these [medical care] general provisions for a mental health context." (App to Pet 139a).

Finally, the Court went far beyond the confines of the terms of the Consent Decree and ordered the Court's "independent expert" to:

> ... develop a list of provisions of the Consent Decree, State Plan and associated agreements and orders which in his opinion meet each of the following criteria:
>
> a. Full and satisfactory compliance exists and evidence of significant noncompliance has not been identified pursuant to the previous compliance hearing process; and,
>
> b. The provision is not related to other provisions where compliance has not yet been achieved.

(App to Pet 44a-45a, emphasis added).

On September 14, 1992, the "independent expert" filed his report. Instead of adhering to the terms of the Consent Decree, it addressed only the State Plan provisions and various court orders. It also identified which provisions should be retained or dismissed. In addition, the report created another criteria which retained any provision in which physical plant construction was necessary, but not completed, and appropriate local government certifications of occupancy had not been acquired. Neither the Consent Decree nor the State Plan contain any provision requiring such local government certifications. In fact, the Consent Decree explicitly states that nothing in this Decree was to be interpreted to require Michigan to

specifically comply with state law (App to Pet 99a-100a).

With the exception of those provisions requiring completion of major construction, the majority of the retained provisions selected by the "independent expert" had a history of substantial compliance in the last five years. Until the report, a number of the provisions had never been found noncompliant.

The December 1, 1992 Order and Opinion of the District Court (App to Pet 30a, 23a) made no reference to compliance with the Consent Decree and deleted certain provisions of the State Plan instead of dismissing the Consent Decree provisions as requested by the parties. The Court adopted the "independent expert's" recommendations, including the criteria requiring certi-

fication of occupancy by the local governments.

The Court deferred the classification and the epidemiological issues for further proceedings, without any explanation. The District Court also deferred consideration of the legal access issues pending submission of a remedial plan by Michigan officials in two other unrelated cases, Hadix v Johnson, supra, WD Mich No. 4:92-CV-110, and Knop v Johnson, WD Mich No. 84:CV:651, following a recent Court of Appeals decision in Knop v Johnson, 977 F2d 996 (CA 6, 1992). Unlike the Knop and the Hadix cases, in the instant case the United States and Michigan had agreed to stipulate rather than litigate this issue and agreed to afford inmates access to the law library facilities. (App to Pet 96a, 188a).

Michigan was further ordered to submit additional compliance reports on the remaining State Plan provisions. No further schedules addressing termination were issued.

On March 30, 1993, the District Court entered an order denying, without prejudice, the United States and Michigan's Joint Motion to Dismiss Portions of the Consent Decree (App to Pet 20a).

Michigan appealed the orders to the Court of Appeals, believing that the District Court had exceeded its authority when it refused to implement the stipulation of the United States and Michigan and grant the joint motion. The Court of Appeals affirmed (App to Pet 1a).

REASONS FOR GRANTING THE WRIT

The Scope Of A Federal Court's Power To Refuse To Dismiss A Prison Reform Consent Decree Under CRIPA Where The United States And The Affected State Seek Dismissal Based Upon Evidence Of Substantial Compliance And Achievement Of The Goal Of The Decree Presents An Important Question Of Federal Law Which Should Be Decided By This Court.

The United States and Michigan entered into a Consent Decree to assure constitutional conditions in three Michigan prisons. Michigan has not admitted that conditions violated the constitution and there has been no finding of any constitutional violation. (App to Pet 88a, 89a). After eight years of monitoring compliance with the Decree, the United States and Michigan signed and filed a stipulation and joint motion asking the District Court to dismiss portions of the Decree since the

parties agreed that "Defendants are in substantial compliance with the Consent Decree and have achieved the goal of the Decree by assuring at least constitutional conditions with respect to: medical care; fire safety; sanitation, safety and hygiene; crowding and protection from harm; and, access to courts and legal mail." (App to Pet 63a). The memorandum of law submitted by the United States and Michigan demonstrated that this conclusion was based upon affirmative evidence in the record from compliance monitoring reports. (App to Pet 74a-77a).

The effect of the District Court's refusal to grant the relief requested by the United States and Michigan is an improper expansion of the District Court's role in mandating changes in prison con-

ditions beyond what is required by the constitution, the enabling statute (CRIPA), and the express terms of the Consent Decree itself. The District Court's orders improperly require additional action by Michigan beyond what is required by the Decree in the absence of any determination of constitutional violations and in derogation of substantial evidence of compliance with the Decree. The orders improperly tie dismissal of the Consent Decree in the instant case to the outcome of separate cases involving private litigants against Michigan. The orders improperly intrude the District Court into the minutiae of day-to-day prison operations without proper deference to prison officials and in derogation of Michigan's sovereignty and principles of comity and federalism. Finally, the orders disregard the

absence of a controversy, violate the principle of separation of powers, deprive the parties of the benefit of their bargain and undermine the strong public policy favoring voluntary settlements and resolution of issues.

A. The Parties' Stipulation Eliminated The Existence Of The Controversy And The District Court's Refusal To Dismiss The Consent Decree As Requested By The Parties Violates The Principle Of Separation Of Powers, Deprives The Parties Of The Benefits Of Their Bargain And Undermines The Strong Public Policy Favoring Voluntary Settlements And Resolution Of Issues.

The Court of Appeals decision is inconsistent with this Court's recognition that the parties' agreement can terminate a court's "judicial policing" of a decree. In Vermont v New York, 417 US 270, 277, 94 S Ct 2248, 41 L Ed 2d 61 (1974), the Court refused to implement

an agreement of the parties that had "no relation to law" and which "might be mere settlements by the parties acting under compulsions and motives that have no relation to performance over Art III functions." In New Hampshire v Maine, 426 US 363, 96 S Ct 2113, 48 L Ed 2d 701 (1976), however, the stipulation between two states over provisions of a consent decree, like the stipulation in the instant case, was permissible. Rather than involving the federal court in policing prospectively the conduct of the parties, as in Vermont, which would change the role of the court from performing judicial functions to performing arbitral functions, the effect of the parties' agreement in New Hampshire, like the stipulation in the instant case, "proposes a wholly permissible final resolution of the controversy,

both as to facts and law." This Court said, 426 US at 369:

> Moreover, there is nothing to suggest that the [agreement between the parties] is wholly contrary to relevant evidence and we therefore see no reason not to give it effect, even if we would reach a different conclusion upon the same evidence. (Emphasis added.)

The Court found nothing to proscribe the acceptance of settlements "that merely have the effect, as here, of reasonably investing imprecise terms with definitions that give effect to a decree ...." 426 US at 369.

Where, as in this case, the objectives of the Decree have been met, the District Court's remedial authority with regard to that aspect of the decree is ended, and that part of the injunction should be dissolved. Pasadena City Board of Education v Spangler, 427 US

424, 436-437, 96 S Ct 2697, 49 L Ed 2d 599 (1976).

The United States Court of Appeals for the Sixth Circuit itself previously stated in Youngblood v Dalzell, 925 F2d 954, 958-960 (CA 6, 1991), that the probing of underlying compliance is not necessary where all parties had agreed that the express terms of the district court's order had been met. The court must look beyond numerical or specific terms of the decree, and consider the goal to which the decree was designed to achieve. Id. at 961.

The strong policy favoring voluntary settlements and issue resolution was effectively undermined by the Court of Appeals decision in the instant case. The District Court was granted unfettered power to independently arbitrate

what it felt should be the terms and the goals of the Decree in spite of the parties' stipulation otherwise.

The very case cited by the Court of Appeals as authorizing such judicial policing in a consent decree emphasized that "a consent decree ... should be construed to preserve the bargained for position of the parties." Williams v Vukovich, 720 F2d 909, 920 (CA 6, 1983). It stressed voluntary settlement as the preferred method for elimination of constitutional violations. Id. at 923.

The Court of Appeals recognized that if a judge simply ignores a stipulation of the parties, the incentive to enter stipulations is eliminated: "Worse yet, it offers a whole new ground for strategic behavior, as parties can try to get the trier of fact to pass on matters

that have already been agreed to." Federal Deposit Ins Corp v St. Paul Fire and Marine Ins Co, 942 F2d 1032, 1038 (CA 6, 1991). Although critical to this appeal, the recent decision did not even attempt to reconcile this important policy.

The Court of Appeals has already recognized that in this case the United States and Michigan, as the parties, had "the right ... to effectively control the future course of proceedings." United States of America v Michigan, 940 F2d 143, 166 (CA 6, 1991). However, the instant Court of Appeals decision negates the parties' ability to control the future course of any consent decree proceeding.

If federal courts are free to ignore the desire of parties to settle CRIPA

cases, no incentive would exist for any governmental entity to voluntarily enter into a consent decree with the United States to resolve constitutional issues, short of trial. Such agreements are useless if the federal court is free to continue and expand enforcement contrary to the agreement of the parties.

A critical question as to the doctrine of separation of powers is also implicated by the circumstances of this case. The Attorney General of the United States, not the District Court, is charged with representing the public's interest in determining the "minimum measures that the Attorney General deems necessary to remedy the alleged conditions." 42 USC § 1997b(a)(1).

The decision to pursue or not pursue rights of institutionalized persons

properly belongs to the Executive Branch alone. Allen v Wright, 468 US 737, 761, 104 S Ct 3315, 3329-30, 82 L Ed 2d 556 (1984), reh'g den 468 US 1250, 105 S Ct 51, 82 L Ed 2d 942 (1984). The separation of powers is also implicated when a district court, rather than the litigants, engages in fact-finding missions on issues no longer existing between the parties. Webster Eisenlohr, Inc v Kalodner, 145 F2d 316, 319-320 (CA 3, 1944), cert den 325 US 867, 65 S Ct 1404, 89 L Ed 1986 (1945).

Judicial deference must be given to the officials charged with assuring the proper operation of a prison, not only because these officials have a better grasp of what is going on, but "also because the operation of our correctional facilities is peculiarly the

province of the Legislative and Executive Branches of Government, not the Judicial." USA, supra at 155, citing Bell v Wolfish, 441 US 520, 547-48, 99 S Ct 1861, 1878-79, 60 L Ed 2d 447 (1979) quoting Procunier v Martinez, 416 US 396, 405, 94 S Ct 1800, 1807, 40 L Ed 2d 224 (1974).

The Court of Appeals ruled that "[b]ecause the 'power and prestige' of the court rests behind a consent decree, a district court is not simply empowered, but is actually obligated, to exercise its independent judgment regarding compliance with a decree." (App to Pet 13a). The effect of the Court of Appeals decision is that the District Court is now authorized to undertake independent fact-finding to determine compliance, even though the

parties agreed that no dispute exists that warrants judicial supervision. Such "judicial policing" was contrary to the Court of Appeals' own earlier decision in Williams v Vukovich, 720 F2d 909 (CA 6, 1983). Williams limited the court's power over entry of an agreement to a determination of whether the agreement was illegal, a product of collusion or contrary to the public interest. 720 F2d at 923. "The court has no occasion to determine the merits of the controversy or the factual underpinning of the legal authorities advanced by the parties." Id. at 923.

B. The District Court's Orders Improperly Compel Implementation Of Michigan Law Rather Than The Requirements Of The Constitution In Violation Of The Terms Of The Enabling Statute And The Decree Itself, And In Derogation Of Michigan's Sovereignty And Principles Of Comity And Federalism.

There is a wealth of decisions from this Court concerning the proper role of federal courts in assuring constitutional conditions in state prisons, and the proper interpretation and enforcement of consent decrees, particularly involving private litigants, when the parties are in opposition concerning the action the court is requested to take or when the consent decree has not been entered as the judgment of the court. This case is unusual because it involves a consent decree which has been entered as the judgment of the District Court; it involves two sovereign governmental

entities as litigants, each of which is dedicated to serving the public interest and protecting constitutional rights; it involves prison reform litigation in the context of enforcing a federal statute designed to enforce constitutional rights; and it involves a situation where the parties agree, based upon eight years of monitoring compliance, that Michigan is in substantial compliance with the decree and that the goal of the decree has been achieved but the federal court itself has denied the parties' joint motion to dismiss the decree and has ordered Michigan to perform actions beyond the scope of the decree.

Although the parties and lower courts have been unable to locate any decision directly on point, Petitioner

Michigan submits that the decisions of the Court of Appeals and District Court are inconsistent with principles expressed in New Hampshire v Maine, 426 US 363, 96 S Ct 2113, 48 L Ed 2d 701 (1976); Allen v Wright, 468 US 737, 104 S Ct 3315, 82 L Ed 2d 556 (1984), reh'g den 468 US 1250, 105 S Ct 51, 82 L Ed 2d 942 (1984); Morris v Gressette, 432 US 491, 97 S Ct 2411, 53 L Ed 2d 506 (1977); Freeman v Pitts, 503 US ___, 112 S Ct 1430, 118 L Ed 2d 108 (1992); Pasadena City Board of Education v Spangler, 427 US 424, 96 S Ct 2697, 49 L Ed 2d 599 (1976); Bell v Wolfish, 441 US 520, 99 S Ct 1861, 60 L Ed 2d 447 (1979); and, Procunier v Martinez, 416 US 396, 94 S Ct 1800, 40 L Ed 2d 224 (1974).

The decisions of the Court of Appeals and District Court are also con-

trary to other decisions within the Sixth Circuit, including the earlier appellate cases United States of America v Michigan, 940 F2d 143 (CA 6, 1991); Williams v Vukovich, 720 F2d 909 (CA 6, 1983); Youngblood v Dalzell, 925 F2d 954 (CA 6, 1991); and, Detroit Police Officers Ass'n v Young, 989 F2d 225 (CA 6, 1993).

Given the magnitude of the federal control over institutional reform cases and the recent development of law in this area, Petitioners submit that the issue in this case is sufficiently important and that there is sufficient conflict of case law to warrant review by this Court.

The Court of Appeals decision undercuts the fundamental principle that the role of federal courts in prison reform

litigation is only to protect federal constitutional rights, Bell v Wolfish, 441 US 520, 539, 99 S Ct 1861, 60 L Ed 2d 447 (1979), not rights under state laws or policies. Federal courts must give deference to the actions of prison officials and must not become immersed in the minutiae of day-to-day problems in operating a prison system. Procunier v Martinez, 416 US 396, 404-405, 94 S Ct 1800, 40 L Ed 2d 224 (1974), Bell v Wolfish, supra, 441 US at 547-548 (quoting Pell v Procunier, 417 US 817, 827, 94 S Ct 2800, 41 L Ed 2d 495 (1974):

> "Such considerations are peculiarly within the province and professional expertise of corrections officials, and, in the absence of substantial evidence in the record to indicate that the officials have exaggerated their response to these considerations, courts should ordinarily defer to their expert judgment in such matters."

In cases involving consent decrees there are additional limits on the authority of the court, but the Court of Appeals did not give them sufficient recognition. In Firefighters Local Union No. 1784 v Stotts, 467 US 561, 574, 104 S Ct 2576, 81 L Ed 2d 483 (1984), this Court said:

> It is to be recalled that the "scope of a consent decree must be discerned within its four corners, and not by reference to what might satisfy the purposes of one of the parties to it" or by what "might have been written had the plaintiff established his factual claims and legal theories in litigation."

Furthermore, in this CRIPA litigation, it must be recalled that the court's authority is limited by the terms of the enabling statute, Firefighters v Stotts, supra, 467 US at 576, fn 9:

> "[T]he District's Court's authority to adopt a consent decree comes only from the statute which the decree is intended to enforce," not from the parties' consent to the decree.

The subject matter jurisdiction created by Congress is limited to the congressional power granted to the court. Federal courts do not have the power to entertain disputes beyond the parameters which Congress has defined. Pennhurst State School & Hospital v Halderman, 465 US 89, 98, 104 S Ct 900, 79 L Ed 2d 67 (1984).

The Civil Rights of Institutionalized Persons Act was the enabling statute for the United States to bring this case. 42 USC § 1997, et seq. The United States Attorney General is vested with the sole discretion to investigate, determine whether unconstitutional conditions exist, and initiate an action, if necessary, pursuant to CRIPA, 42 USC § 1997a(a). The United States, through the U.S. Attorney General, is congres-

sionally mandated to represent the public interest in assuring that minimal constitutional conditions exist in prisons. 42 USC §§ 1997a(a) and 1997b(a)(3). Nothing in CRIPA permits the United States or the federal court to enforce provisions of state law, as the District Court's orders have done in the instant case.

In Lorain NAACP v Lorain Bd of Educ, 979 F2d 1141, 1150 (CA 6, 1992), cert den ___ US ___, 113 S Ct 2998, 125 L Ed 2d 691 (1993), the Court of Appeals adhered to this Court's decisions that define the constitutional limitation of equitable powers. Federal courts cannot order state governments, over their objections, to undertake remedies not tailored to cure constitutional violations. Lorain NAACP citing Milliken v

Bradley, 418 US 717, 738, 94 S Ct 3112, 3124, 41 L Ed 2d 1069 (1974) and Rufo v Inmates of Suffolk County Jail, ___ US ___, 112 S Ct 748, 762, 116 L Ed 2d 867 (1992).

Just as importantly, this constitutional limitation on the court's policing power is the law of the case. United States of America v Michigan, 940 F2d 143 (CA 6, 1991). In that decision, the Court of Appeals recognized that the federal court was limited to correcting only constitutional violations when enforcing compliance with the terms of the Consent Decree. The scope of the court's authority was confined to the limited purpose of the enabling statute to this suit, CRIPA, in assuring at least minimal constitutional conditions, as narrowly defined by this Court. 940

F2d at 146-148, 154-155, 158, fn 11. By contrast, the instant decision affords the District Court, under the guise of implementing the Consent Decree, virtually unlimited power to compel Michigan to implement provisions of state law (the State Plan) without any controversy or proof that the actions mandated are constitutionally necessary.

The terms of the Consent Decree never authorized the amount of court "policing" provided by this decision. Resolution of issues was to be accomplished by the parties, not the court. Resorting to the court was to be done only under the circumstances that an unresolved dispute existed between the parties. (App to Pet 105a, "The United States may seek appropriate orders for enforcement of this Decree, but will not

do so until first consulting with Defendants in an effort toward informal resolution of any dispute."). An automatic process was established to redefine terms of the Decree and the State Plan without resorting to the court. (App to Pet 101a, "If there is no objection to the Defendants' proposed plan, the plan shall be appended to the State Plan and subject to enforcement in accordance with the provisions of this Decree".). Court policing was only necessary if these alternate dispute resolutions were not successful. (App to Pet 102a, "If the United States objects to any of the Defendants' proposed plans, the parties shall attempt to conciliate any difference among themselves ... If necessary, the United States may commence hearings concerning unresolved objections to proposed plans.").

Similarly, the Decree expressly limited the court's jurisdiction to what is constitutionally required. (App to Pet 99a-100a, "Nothing in this Decree shall be interpreted as requiring the Defendants specifically comply with any State law or any other provisions of the State Plan that does not implicate constitutional rights of inmates."). Under the Decree, ¶ Q, the court's policing authority was limited to "fulfilling [the Decree's] stated purpose to bring [the named facilities] into constitutional compliance". (App to Pet 106a). Nothing in the Constitution or the Consent Decree permits the court to tie enforcement of the Decree to the outcome of separate litigation by private entities, as the District Court's orders have done in the instant case.

Thus, the authority of the federal court with respect to this CRIPA Consent Decree cannot conflict with or be expanded to include matters beyond the scope of its constitutionally anchored subject matter jurisdiction.

C. The District Court Exceeded Its Authority In Refusing To Grant The Parties' Joint Motion To Dismiss.

Michigan does not suggest that the District Court is merely a rubber stamp without any authority to make an independent evaluation of the parties' joint motion. Michigan submits that the District Court did not make an independent evaluation of whether provisions of the Consent Decree should be dismissed; to the contrary, the Court's orders ignore the Consent Decree and the requirements of the Constitution and focus exclusively -- and improperly -- on minutiae of the State Plan which are not connected to the constitutionality of conditions in the prisons. Michigan submits that the Court of Appeals erred in balancing the court's authority against the wishes of the parties and

the requirements of the Decree, especially in light of this Court's repeated exhortations against undue interference by federal courts in state prison operations and the fact that remedies are strictly limited by CRIPA and the terms of the Consent Decree solely to curing constitutional violations. Williams v Vukovich, 720 F2d 909, 923 (CA 6, 1983), indicates that the court's authority is limited to determining whether the parties' agreement is illegal, a product of collusion or contrary to the public interest; Bell v Wolfish, 441 US 520, 548, 99 S Ct 1861, 60 L Ed 2d 447 (1979), counsels in favor of deference to state officials in the absence of "substantial evidence in the record" of unconstitutional action; and New Hampshire v Maine, 426 US 363, 369, 96 S Ct 2113, 48 L Ed 2d 701 (1976), permits

implementation of the parties' agreement when the agreement "reasonably invest[s] imprecise terms with definitions" and there is nothing to suggest that the agreement "is wholly contrary to relevant evidence."

Under any such formulation, the District Court exceeded its authority when it refused to grant the parties' joint motion.

For eight years the United States and Michigan investigated, negotiated and resolved the issues which were in dispute in this case. A controversy no longer existed in April 1992 when the parties to this Decree mutually submitted their stipulation and the supporting pleadings to dismiss essentially all of the issues of the Decree. No outstanding motions or allegations of noncompliance

were pending. There were no disputes for the court to resolve and no basis for continuing supervision.

This is an institutional reform case whose only parties are the State and Federal officials charged with assuring that the minimal constitutional requirements are achieved in the State's prisons. The appropriate executive officers of the State and Federal governments have decided that federal control of the state's prisons should no longer continue. The critical question is the extent to which the federal judiciary should continue this control by maintaining a consent decree despite the parties' agreement that there has been substantial compliance and that the decree's goal of assuring constitutional conditions has been achieved.

These federalism and comity issues are critical questions that need to be addressed not only in this case, but for all other cases involving CRIPA investigations, negotiations and litigation by the Attorney General.

RELIEF SOUGHT

WHEREFORE, this Court should grant certiorari to review the decision of the Court of Appeals for the Sixth Circuit and rule that the District Court exceeded its authority in refusing to grant the parties' joint motion to dismiss portions of the Consent Decree where the parties stipulated that there had been substantial compliance and that the goal of assuring at least constitutional conditions had been achieved.

Respectfully submitted,

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RECOMMENDED FOR FULL-TEXT PUBLICATION
Pursuant to Sixth Circuit Rule 24

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0078P (6th Cir.)
File Name: 94a0078p.06

Nos. 93-1222/1810

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

STATE OF MICHIGAN; JOHN ENGLER; MICHIGAN DEPARTMENT OF CORRECTIONS; GWEN ANDREW; THOMAS EARDLEY; DUANE L. WATERS; DON P. LEDUC; KENNETH L. MCGINNIS; DAN BOLDEN; JOHN JABE; PAMELA WITHROW; JOHN HAWLEY; JAMES POGATS; JACK BERGMAN,

Defendants-Appellants.

On Appeal from the United States District Court for the Western District of Michigan

---

Decided and Filed March 4, 1994

Before: KEITH and RYAN, Circuit Judges; and JOHNSTONE, Senior District Judge.*

RYAN, Circuit Judge. The United States filed this case to require the State of Michigan to bring the conditions in several Michigan prisons up to constitutional standards. In 1984, the United States and Michigan agreed to a consent decree, which was entered by the district court. In April 1992, the parties filed a joint motion requesting that the court dismiss portions of the consent decree because Michigan had substantially complied with the terms of the decree and because all but one of the disputed conditions had been brought into compliance with constitutional standards. The parties requested that the consent decree remain in place with

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*The Honorable Edward H. Johnstone, Senior United States District Judge for the Western District of Kentucky, sitting by designation.

respect to mental health issues, which were still in dispute. The district court refused to adopt the parties' stipulation in its entirety, and the State of Michigan appeals that decision.

The issue for decision is whether the district court was bound to act in conformance with the stipulation of the parties. We hold that it was not, and affirm.

I.

This case has already made one trip to the Sixth Circuit, and the general background facts are succinctly set forth in this court's prior opinion. We will not repeat them here. See United States v. Michigan, 940 F.2d 143 (6th Cir. 1991). Instead, we recount only the facts necessary to our decision.

The consent decree entered by the court sets forth broad, generalized

goals for Michigan to meet in each of five areas. The decree also references a "state plan" for achieving these goals:

> H. Defendants have developed their own comprehensive plan, entitled "State Plan for Compliance" (State Plan), specifying measures they intend to take at [the subject prisons] in order to assure constitutional conditions therein, and to address a number of other matters designed to improve conditions of confinement. Defendants intend to fully implement the State Plan unless implementation is excused or modified in accordance with the terms of this Decree. A copy of the State Plan is attached to this Decree as Exhibit A.
>
> I. Implementation of the various provisions of the State Plan will be adequate to bring Defendants into full compliance and thereby satisfy the terms and provisions of this Decree. The Court shall be advised as to each failure to comply with the provisions of the State Plan and, on request of either party or on the Court's own motion, a hearing may be held as to the constitutional implications of said failure and Defendants' noncompliance. Nothing in this Decree shall be interpreted as requiring Defendants to specifically comply with any State law, or any other provision of the State Plan that

does not implicate constitutional rights of inmates.

> J. Defendants shall report to the Court and to the United States any time they intend to modify their Plan, and shall advise the Court and the United States, by legal memoranda, whether the modification sought raises constitutional issues.

After several years of monitoring, compliance hearings, and an appeal to this court, the parties filed a joint motion on April 29, 1992, to dismiss portions of the consent decree. In the motion, the parties stated that they "agree that Defendants are in substantial compliance, and have achieved the goals of the Decree by assuring at least constitutional conditions" with respect to all disputed conditions except mental health care. According to paragraph R of the consent decree, however, termination was an all or nothing matter:

> R. After Defendants have complied with all of the terms of this Decree, Defendants may apply to terminate the jurisdiction of this Court.

Consequently, the joint motion also requested that the district court amend paragraph R to read:

> Termination of the Court's jurisdiction may be sought by either party as to any provision of the Decree when Defendants are in compliance with constitutional requirements.

The joint motion was accompanied by a stipulation to dismiss all issues except those relating to the mental health of the inmates.

The district court entered its first opinion and order with respect to the joint motion on July 2, 1992. The district court refused to adopt the amendment proposed by the parties to the termination clause of the decree. While the court was willing to dismiss portions of the decree on a piecemeal basis, it felt that the language proposed by the parties substituted com-

pliance with the Constitution for compliance with the consent decree. The court's order vacated paragraph R of the decree and allowed piecemeal dismissal of the decree provided the State complied with the pertinent terms of the decree.

The court next refused to dismiss any portion of the decree without receiving an updated report on the status of compliance. To that end, the court ordered a review by the independent expert assigned to monitor the consent decree. The expert was directed to develop a list of the various provisions of the decree and determine whether each provision had been complied with. The expert was also asked to determine the relationship, if any, between provisions for which there was compliance and those where compliance had not been achieved.

The court's order explicitly declined to dismiss the portions of the consent decree related to medical care because the court found that these provisions were inextricably linked to the mental health requirements such that the two should be reviewed together. The court also specified that the first round of compliance investigations should relate only to the Marquette Branch Prison and the Michigan Reformatory. The court judicially noticed that the State was in the process of implementing the final round of changes at the State Prison of Southern Michigan required by the consent decree in a prisoner civil rights case known as Hadix v. Johnson, 694 F. Supp. 259 (E.D. Mich. 1988). The court felt that the implementation of these requirements might warrant dismissal of various pro-

visions of the United States v. Michigan decree in favor of the Hadix decree. The court concluded its order by stating:

> Following receipt of the Independent Expert's Report and the comments by the parties and amici, and following a hearing if necessary, the Court will enter an order dismissing jurisdiction over provisions where compliance has been achieved. If provisions remain where compliance has not been achieved, the Court will entertain motions with respect to those provisions, which may include motions to modify the Decree based on the parties' positions concerning constitutional requirements.

II.

With this background in mind, we now reach the subject of the first notice of appeal to this court, an appeal from a December 1, 1992, opinion and order of the district court granting portions of the parties' joint motion and deferring decision on the balance of the motion. The district court issued this opinion

and order after receiving the requested reports from the expert. The court's opinion addressed the terms of the state plan attached to the consent decree. The court found that there had been compliance with selected portions of the state plan concerning 1) sanitation, safety, and health; 2) fire safety; and 3) overcrowding and protection from harm, and therefore "dismissed" those portions of the state plan.

The court declined, however, to dismiss any of the portions of the decree concerning access to courts. The court believed that a new state plan was required in light of this court's decisions in the consolidated appeal of Knop v. Johnson and Hadix v. Johnson, 977 F.2d 996 (6th Cir. 1992), cert. denied, 113 S. Ct. 1415 (1993). In that opinion, this court held that meaningful

access to the courts may require more than simply law books and simplified pleading forms. Thus, the district court found that the state plan portions of the decree concerning access to the courts no longer complied with the relevant constitutional requirements. The court also ordered further reports on portions of the consent decree which it did not dismiss. The State of Michigan appealed.

A second notice of appeal was also filed with respect to a March 30, 1993, order entered by the district court. That order, however, has no substantive effect for reasons we need not detail. Accordingly, we follow the parties' lead in treating the two orders as one. All of the issues raised in this appeal are questions of law; therefore, we review the decisions of the district court de

novo.

III.

Although Michigan identifies several different legal theories on appeal, it essentially is challenging the district court's authority to refuse to implement the parties' stipulation to dismiss the majority of the consent decree. A consent decree is a unique legal document. This court has described it as follows:

> It is at once "a voluntary settlement agreement which could be fully effective without judicial intervention" and "a final judicial order . . . plac[ing] the power and prestige of the court behind the compromise struck by the parties."
>
> . . . Thus, a consent decree is aptly described as "a settlement agreement subject to continued judicial policing."

Lorain NAACP v. Lorain Bd. of Educ., 979 F.2d 1141, 1148 (6th Cir. 1992) (quoting Williams v. Vukovich, 720 F.2d 909, 920 (6th Cir. 1983)), cert. denied, 113 S. Ct. 2998 (1993).

Because the "power and prestige" of the court rests behind a consent decree, a district court is not simply empowered, but is actually obligated, to exercise its independent judgment regarding compliance with a decree. Otherwise, a court would simply become a rubber stamp for the parties, and the policing role of the court would become meaningless. A consent decree is a judgment. The United States and the State of Michigan stipulated to the entry of a consent decree which was then submitted to the district court for approval and for entry of judgment. Once entered, the decree became the court's judgment, subject to its monitoring. Once the jurisdiction of the court has been invoked, that court has an obligation to exercise its jurisdiction meaningfully; it may not blindly

defer to the stipulation of the parties. The State contends that it is not arguing for blind acceptance; it concedes that the district court has authority to review the stipulation to determine whether it is unworkable or unconstitutional. We think the district court's authority is greater than that.

Under Fed. R. Civ. P. 60(b), a court has the authority to modify a judgment when that judgment has been released or satisfied or for any other reason which makes continuance of the judgment unjust.[1] This authority, however, is

---

[1]Fed. R. Civ. P. 60(b) provides:

> On motion and upon such terms as are just, the court may relieve a party . . . from a final judgment, order, or proceeding for the following reasons: . . . (5) the judgment has been satisfied, released, or discharged, . . . or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

discretionary. Necessarily, then, the court must exercise its judgment whether to accede to a stipulation by the parties; a stipulation does not deprive a court of its inherent supervisory authority under Fed. R. Civ. P. 60(b).

Moreover, the consent decree itself requires the district court to exercise its judgment concerning compliance with its terms. The decree provides that the district court is to monitor compliance with the state plan attached to the decree and is to consider and rule upon any proposed modifications to that plan. The termination provision of the decree, paragraph R, states that "[a]fter Defendants have complied with all of the terms of this Decree, Defendants may apply to terminate the jurisdiction of this Court." (Emphasis added.) The requirement that Michigan apply to the

district court for termination implies that the court is obligated to exercise its judgment and determine whether compliance has been achieved and whether termination is warranted.

Michigan also maintains that the district court's jurisdiction under the decree is limited by the Constitution, not by the terms of the state plan. The State contends that the lower court's jurisdiction ceased once the parties stipulated to constitutional compliance. We need not, however, decide this issue. The plain language of the consent decree provides that compliance with the state plan would be considered compliance with the Constitution. Michigan is correct that the consent decree does not explicitly provide that compliance with the state plan is the only means to satisfy compliance with

the Constitution. The lower court, however, never took this position.

The state plan is an integral and important component of the consent decree. The plan provides a detailed, concrete way to satisfy the broad goals laid out in the decree. The decree requires Michigan to seek the court's approval prior to modifying the plan; specifically, the court must determine whether proposed changes comply with constitutional standards. The record also shows that the compliance hearings monitored implementation of the state plan, as well as compliance with the broad goals of the consent decree.

The July 2 order of the district court set forth the procedure the court would follow in addressing the parties' joint motion for dismissal. In that

order, the court rejected the termination language proposed by the parties and substituted its own language. The district court felt that, since compliance had always been measured against the state plan, that was the easiest place to begin. The court held that the termination language proposed by the parties did not recognize the significance of the plan component of the decree. The court did not, however, require compliance with all the terms of the plan before it would dismiss any provision of the consent decree. Instead, the court set up a two step procedure. The court would first review compliance under the plan and would dismiss any portions of the decree for which it found compliance. Second, the court would entertain motions regarding the portions of the decree and the plan

for which the court did not find compliance. In these motions, the parties could argue the relevant constitutional standards and show that compliance with the full terms of the plan should not be required. This procedure conforms to the modification provisions of the decree and with existing law.

If Michigan wishes to argue that the plan goes too far and that constitutional requirements have already been met, it should first raise these issues in the district court, following the procedure provided by that court and the consent decree.

IV.

For the foregoing reasons, we AFFIRM the judgment of the district court.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA,

Plaintiff,

v File No. 1:84:CV:63

STATE OF MICHIGAN; JOHN ENGLER, Governor of Michigan; MICHIGAN DEPARTMENT OF CORRECTIONS; KENNETH M. McGINNIS, Director, Michigan Department of Corrections; DAN L. BOLDEN, Deputy Director, Michigan Department of Corrections; JOHN JABE, Regional Administrator, State Prison of Southern Michigan; PAMELA K. WITHROW, Warden, Michigan Reformatory; and JOHN HAWLEY, Warden, Marquette Branch Prison,

HON. RICHARD A. ENSLEN

Defendants.
_____/

ORDER

This case is before the Court on two motions filed by defendants: (1) motion to modify defendants' epidemiological contagions plan; and (2) motion to dismiss portions of the consent decree.

The Court notes that these motions have been pending for several months. As the parties know, the outcome of these motions depends, in part, on further factual development (e.g., a hearing). Thus, they can not be decided at this time. Therefore, for administrative purposes only, the Court will dismiss these motions without prejudice. Defendants need not refile these motions. The Court will issue further orders regarding these matters in the future. Accordingly,

IT IS HEREBY ORDERED that defendants' motion to modify defendants' epidemiological contagions plan, filed January 11, 1990 (dkt. # 940), is DENIED without prejudice;

IT IS FURTHER ORDERED that defendants' motion to dismiss portions of the consent decree, filed April 29, 1992

(dkt. # 1679), is DENIED without prejudice.

/s/
RICHARD A. ENSLEN
United States District Judge

Dated in Kalamazoo, MI:
March 30, 1993

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA,

Plaintiff,

v File No. 1:84-CV-63

STATE OF MICHIGAN; JOHN ENGLER, Governor of Michigan; MICHIGAN DEPARTMENT OF CORRECTIONS; KENNETH M. McGINNIS, Director, Michigan Department of Corrections; DAN L. BOLDEN, Deputy Director, Michigan Department of Corrections; JOHN JABE, Regional Administrator, State Prison of Southern Michigan; PAMELA K. WITHROW, Warden, Michigan Reformatory; and JOHN HAWLEY, Warden, Marquette Branch Prison,

HON. RICHARD A. ENSLEN

Defendants.
_____/

ORDER

In accordance with the Opinion entered this date;

IT IS HEREBY ORDERED that the Joint Motion of the United States and the State of Michigan to Dismiss Portions of

the Consent Decree, filed April 29, 1992 (dkt. #1679), is GRANTED in part, and DEFERRED in part to a determination at a later time;

IT IS FURTHER ORDERED that Section 1 of the State Plan for Compliance, entitled "Measures with Respect to Sanitation, Safety, and Health," is modified as follows:

> Michigan Reformatory - the following sections of the State Plan for Compliance are deleted: D, E, F, G, I.1, I.3, I.4, I.6, J.1, J.2, J.4, J.5, K, L.1 and L.4. Further, Section B requires implementation of a Sanitation Plan, attached to the State Plan for Compliance. Within the Sanitation Plan, sections II and III are deleted with respect to the Michigan Reformatory.
>
> Marquette Branch Prison - the

following sections of the State Plan for Compliance are deleted: A, B, D, E, F, G, H.1, H.2, I.1, I.2, I.3, I.4, I.6, J.1, J.2, J.3, J.4, J.5, K and L. Further, the institutional staff mandated by the Court's January 29, 1987 Order are no longer required at the Marquette Branch Prison.

IT IS FURTHER ORDERED that Section 3 of the State Plan for Compliance, entitled "Fire Safety," is modified as follows:

Michigan Reformatory - the following sections of the State Plan for Compliance are deleted: A.1, A.3, A.4, A.6, B, C, D, E, G.1, G.3 - G.7, H.1, H.3, and H.4.

Marquette Branch Prison - the following sections of the State Plan for Compliance are deleted: A, B, C,

D, E, F, G.1, G.3 - G.7, H, I, and J.

IT IS FURTHER ORDERED that Section 4 of the State Plan for Compliance, entitled "Overcrowding and Protection from Harm" is modified as follows:

Michigan Reformatory - the following sections of the State Plan for Compliance are deleted: A, B, C, D, E, G, H.1, I, J.1 - J.5, and J.8 - J.10. Section F, which requires audits of compliance, shall apply only to provisions that were not deleted by this Opinion.

Marquette Branch Prison - the following sections of the State Plan for Compliance are deleted: A, B, D, E, H.1, I J.1 - J.4, and J.7 - J.9. Section F, which requires audits of compliance, shall apply only to provisions that were not deleted by

this Opinion.

IT IS FURTHER ORDERED that the part of the Joint motion of the United States and the State of Michigan to Dismiss Portions of the Consent Decree concerning the "access to courts" issue is HELD IN ABEYANCE and further consideration of this issue is STAYED pending a review of the State of Michigan plan;

IT IS FURTHER ORDERED that the Decree Compliance Coordinator shall submit to this Court a compliance report on the status of implementation of the Classification Plan by January 15, 1993. The Independent Expert shall submit comments on this report by March 1, 1993. The parties and amici shall submit their comments on both reports by April 15, 1993, including comments as to whether further proceedings are necessary.

IT IS FURTHER ORDERED that the

Motion by Defendant State of Michigan to Modify Defendants' Epidemic Contagions Plan (referred to in the motion as "Epidemiological Contagions Plan"), filed January 11, 1990 (dkt. #940), is HELD IN ABEYANCE and that further consideration of this motion is STAYED pending resolution of other unresolved matters in the Joint Motion of the United States and the State of Michigan to Dismiss Portions of the Consent Decree.

IT IS FURTHER ORDERED that the Consent Decree Compliance Coordinator shall submit a compliance report on the remaining provisions pertaining to fire safety; sanitation; safety and hygiene; and, crowding and protection from harm at the Marquette Branch Prison and the Michigan Reformatory by November 1, 1993.

/s/
RICHARD A. ENSLEN
United States District Judge

Dated in Kalamazoo, MI:
12-1-92

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA,

Plaintiff,

v File No. 1:84-CV-63

STATE OF MICHIGAN; JOHN ENGLER, Governor of Michigan; MICHIGAN DEPARTMENT OF CORRECTIONS; KENNETH M. McGINNIS, Director, Michigan Department of Corrections; DAN L. BOLDEN, Deputy Director, Michigan Department of Corrections; JOHN JABE, Regional Administrator, State Prison of Southern Michigan; PAMELA K. WITHROW, Warden, Michigan Reformatory; and JOHN HAWLEY, Warden, Marquette Branch Prison,

HON. RICHARD A. ENSLEN

Defendants.
_____/

OPINION

This case is before the Court on the Joint Motion of the United States and the State of Michigan to Dismiss Portions of the Consent Decree, filed by the parties on April 29, 1992. On July

2, 1992, this Court issued an Order that granted, in part, and deferred, in part, a ruling on this motion. As a part of the Court's July 2, 1992 Order, the Consent Decree Compliance Coordinator and the Independent Expert ("IE") were required to submit reports concerning compliance by the Marquette Branch Prison and the Michigan Reformatory regarding the following matters: fire safety; sanitation; safety and hygiene; crowding and protection from harm; and access to the courts. The Court has received and reviewed these reports, as well as comments offered by the parties and amici. The Court is now prepared to rule on various issues raised in this matter.

Deletion of Selected Provisions of the State Plan

In the July 2, 1992 Order, the Court

set forth criteria to be met in order for the Court to delete provisions from the State Plan for Compliance without further evidentiary proceedings. The Independent Expert's report identifies provisions of the State Plan for Compliance that, in the opinion of the IE, meet those criteria. The IE's recommendations depart from the Order in only two respects. First, the IE has made recommendations to "retain" as well as to "dismiss" provisions. While the Court adopts most of the IE's recommendations concerning provisions appropriate for dismissal, the Court will consider the status of remaining provisions in further proceedings.

Secondly, the IE has recommended that certain provisions be dismissed, even though compliance did not exist during the previous compliance monitor-

ing process as mandated by paragraph (a) of the Court's July 2, 1992 Order. The IE made the recommendation under the following conditions:

> 1) if the provision requires only the completion of a renovation or construction project and does not include subsequent operational requirements, and 2) if the scope of the project has been completed by the Court and the parties, and 3) if the project has been completed and has received appropriate certifications for occupancy. The IEs have made this recommendation because compliance appears to have been achieved, and subsequent noncompliance with the actual requirements of the provision cannot be an issue, since a requirement for ongoing performance is not set forth by the provision.

Independent Expert Report at 2.

Accordingly, the Court finds that the IE's criteria is reasonable. Moreover, I find that the effect of the application of the IE's criteria is to increase the number of provisions to be dismissed, which is consistent with the Joint Motion of the parties.

The Court will order several modifications to the State Plan for Compliance, as these provisions apply to the Michigan Reformatory and the Marquette Branch Prison.

Sanitation

Section 1 of the State Plan for Compliance, entitled "Measures with Respect to Sanitation, Safety, and Health," is modified as follows:

> Michigan Reformatory - the following sections of the State Plan for Compliance are deleted: D, E, F, G, I.1, I.3, I.4, I.6, J.1, J.2, J.4, J.5, K, L.1, and L.4. Further, Section B requires implementation of a Sanitation Plan, attached to the State Plan for Compliance. Within the Sanitation Plan, sections II and III are deleted with respect to the Michigan Reformatory.

Marquette Branch Prison - the following sections of the State Plan for Compliance are deleted: A, B, D, E, F, G, H.1, H.2, I.1, I.2, I.3, I.4, I.6, J.1, J.2, J.3, J.4, J.5, K and L. Further, the institutional staff mandated by the Court's January 29, 1987 Order are no longer required at the Marquette Branch Prison.

Fire Safety

Section 3 of the State Plan for Compliance, entitled "Fire Safety," is modified as follows:

Michigan Reformatory - the following sections of the State Plan for Compliance are deleted: A.1, A.3, A.4, A.6, B, C, D, E, G.1, G.3 - G.7, H.1, H.3, and H.4.

Marquette Branch Prison - the following sections of the State Plan

for Compliance are deleted: A, B, C, D, E, F, G.1, G.3 - G.7, H, I, and J.[1]

Crowding and Protection from Harm

Section 4 of the State Plan for Compliance, entitled "Overcrowding and Protection from Harm" is modified as follows:

Michigan Reformatory - the following sections of the State Plan for Compliance are deleted: A, B, C, D, E, G, H.1, I, J.1 - J.5, and J.8 - J.10. Section F, which requires audits of compliance, shall apply only to provisions that were not deleted by this Opinion.

Marquette Branch Prison - the

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[1]The Court has not dismissed provision I and J for the Michigan Reformatory because the reporting required under these provisions may provide assistance to the Court in considering other provisions not yet dismissed.

following sections of the State Plan for Compliance are deleted: A, B, D, E, H.1, I, J.1 - J.4, and J.7 - J.9. Section F, which requires audits of compliance, shall apply only to provisions that were not deleted by this Opinion.

Access to Courts

The Court notes the Sixth Circuit's recent decisions in Knop v. Johnson and Hadix v. Johnson. While the Sixth Circuit vacated parts of the two orders involved in these cases, it affirmed the conclusion of this Court that for some prisoners, meaningful access to the judicial system may require assistance beyond law books and simplified pleading forms. Because the United States v. Michigan decree requires, "meaningful access to the Courts," and yet the State Plan proposes access only to law books,

it appears to the Court that a review of the State Plan may be appropriate to determine whether the State Plan achieves the requirements of the Consent Decree. Therefore, the Court will not rule on the Joint Motion to dismiss with respect to this issue at this time.

Other Matters

There presently are several unresolved matters before the Court in this case which I will briefly address at this time.

Classification

The Court will order the Decree Compliance Coordinator to submit, by January 15, 1993, a compliance report on the status of implementation of the Classification Plan. The Independent Expert will be ordered to submit his comments on this report by March 1, 1993. The parties and amici are ordered

to submit their comments on both reports by April 15, 1993, including comments as to whether further proceedings are necessary.

Epidemiological Contagions Plan

The Court notes that the Motion by Defendant State of Michigan to Modify Defendants' Epidemic Contagions Plan (referred to in the motion as "Epidemiological Contagions Plan"), filed January 11, 1990, is still pending. The Court will further stay a decision on this motion to an undetermined date in the future, probably in the summer of 1993. the Court will consider this motion in conjunction with the remaining issues in the Joint Motion to Dismiss.

/s/
RICHARD A. ENSLEN
United States District Judge

Dated in Kalamazoo, MI:
Dec 1, 1992

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA,

Plaintiff,

v File No. 1:84-CV-63

STATE OF MICHIGAN; JOHN ENGLER, Governor of Michigan; MICHIGAN DEPARTMENT OF CORRECTIONS; KENNETH M. McGINNIS, Director, Michigan Department of Corrections; DAN L. BOLDEN, Deputy Director, Michigan Department of Corrections; JOHN JABE, Regional Administrator, State Prison of Southern Michigan; PAMELA K. WITHROW, Warden, Michigan Reformatory; and JOHN HAWLEY, Warden, Marquette Branch Prison,

HON. RICHARD A. ENSLEN

Defendants.
_____/

ORDER

IT IS HEREBY ORDERED that the "Joint Motion of the United States and State of Michigan to Dismiss Portions of the Consent Decree," filed April 29, 1992 (dkt. # 1679), is GRANTED, in part, and

DEFERRED, in part, pending receipt of further information as ordered herein;

IT IS FURTHER ORDERED that the first sentence of Paragraph R of the Consent Decree, which requires compliance with all the terms of the Decree prior to termination of Court jurisdiction, is VACATED in order to permit the termination of jurisdiction as to any portions of the Decree upon a finding that the Defendants are in compliance with the Decree provisions for which dismissal is sought;

IT IS FURTHER ORDERED that consideration of the motion to dismiss, insofar as it relates to medical care, shall be STAYED and the motion HELD IN ABEYANCE until medical care can be jointly considered with a motion relating to mental health care at the time that compliance with mental health provisions has been

achieved;

IT IS FURTHER ORDERED that consideration of the joint motion to dismiss, insofar as it addresses provisions relating to fire safety, sanitation and personal hygiene, crowding and protection from harm, and access to courts, for the State Prison of Southern Michigan, shall be STAYED and the motion HELD IN ABEYANCE until after completion of hearings or decisions relating to the Marquette Branch Prison (MBP) and the Michigan Reformatory (MP);

IT IS FURTHER ORDERED that, except as specified herein, the parties' joint motion to dismiss provisions of the Consent Decree pertaining to medical care, fire safety, sanitation, safety and hygiene, crowding and protection from harm, and access to the courts and legal mail, is HELD IN ABEYANCE and con-

sideration of such motion is STAYED pending completion of the schedule of events specified in this order;

IT IS FURTHER ORDERED that the following schedule shall be implemented so that consideration of the parties' motion to dismiss may proceed:

Compliance Report -- by August 1, 1992:

With respect to the Fire Safety, Sanitation, Safety and Hygiene, Crowding and Protection from harm, and Access to Courts provisions, as they pertain to Marquette Branch Prison and the Michigan Reformatory, the Decree Compliance Coordinator shall issue a compliance report that states with particularity the state of compliance with respect to each provisions of the Consent Decree, State Plan, and associated orders

and agreements, and shall identify all relevant documentation.

Review by the Independent Expert -- by September 15, 1992:

The Independent Expert (IE) shall review the compliance report, confer with the Decree Compliance Coordinator, and conduct inspections and request documents consistent with his authority under his order of appointment. The IE shall develop a list of provisions of the Consent Decree, State Plan, and associated agreements and orders which in his opinion meet each of the following criteria:

a. Full and satisfactory compliance exists and evidence of significant noncompliance has not been identified pursuant to the previous compliance hearing

process, with respect to the provision and facility location involved.

b. The provision is not related to other provisions where compliance has not yet been achieved.

Comments by Parties and Amici -- by October 15, 1992:

Parties and Amici shall review the Independent Expert's list and shall comment to the Court as to whether any items identified on the list fail to meet the criteria specified above.

Dismissal Order, with Consideration of Further Motions

Following receipt of the Independent Expert's Report and the comments by the parties and amici, and following

a hearing if necessary, the Court will enter an order dismissing jurisdiction over provisions where compliance has been achieved. If provisions remain where compliance has not been achieved, the Court will entertain motions with respect to those provisions, which may include motions to modify the Decree based on the parties' positions concerning constitutional requirements.

/s/
RICHARD A. ENSLEN
United States District Judge

Dated: July 2, 1992

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA,

Plaintiff,

v File No. 1:84-CV-63

STATE OF MICHIGAN; JOHN ENGLER, Governor of Michigan; MICHIGAN DEPARTMENT OF CORRECTIONS; KENNETH M. McGINNIS, Director, Michigan Department of Corrections; DAN L. BOLDEN, Deputy Director, Michigan Department of Corrections; JOHN JABE, Regional Administrator, State Prison of Southern Michigan; PAMELA K. WITHROW, Warden, Michigan Reformatory; and JOHN HAWLEY, Warden, Marquette Branch Prison,

HON. RICHARD A. ENSLEN

Defendants.
_____/

OPINION

This matter is before the Court on the "Joint Motion of the United States and State of Michigan to Dismiss Portions of the Consent Decree."

The United States brought suit on

January 18, 1984 against the State of Michigan and a number of named state officials pursuant to the Civil Rights of Institutionalized Persons Act of 1980, 42 U.S.C. 1997 et seq. This action, which related to alleged constitutional violations in the areas of medical and mental health care, fire safety, sanitation and personal hygiene, crowding and protection from harm, and access to courts, was resolved by a Consent Decree negotiated between the parties and approved and entered by the Court in July of 1984. The parties now jointly move for the dismissal of all portions of the Consent Decree except those pertaining to mental health, and they support their motion by a Stipulation titled "Stipulation of Dismissal as to All Issues Expect for Mental Health". In this Opinion and Order, the Court

sets forth a procedure and schedule for consideration of the motion.

Paragraph R of the Consent Decree

The first issue concerns Paragraph R of the Decree, the first sentence of which provides that "after defendants have complied with all of the terms of this Decree, Defendants may apply to terminate the jurisdiction of this Court." The motion proposes that portions of the Decree be dismissed, even though all of the terms of the Decree have not been satisfied. Accordingly, the relief requested by the parties in their motion is contrary to the terms of the Consent Decree.

As a mechanism for getting around this problem, the parties offer paragraph 2 and 3 of the Stipulation, wherein the parties agree to vacate Paragraph R of the Decree and stipulate

that "the termination of the Court's jurisdiction may be sought by either party as to any provision of the Decree when Defendants are in compliance with constitutional requirements." See Stipulation of April 29, 1992, ¶ 3. As can be seen by the substitute language, this alternative not only allows piecemeal dismissal of the case, but also substitutes compliance with the Constitution for compliance with the Consent Decree.

The Court is not opposed, in principle, to the partial dismissal of portions of the Consent Decree when the Defendants have achieved a satisfactory level of compliance with the portions involved and when the portions can be clearly severed from other portions of the Decree that will remain in force. However, the Court believes that the

approach to determining compliance proposed by the parties unecessarily (sic) complicates matters by requiring constitutionally grounded justifications for terminating portions of the Decree, when all that may be necessary are assertions of compliance with the terms of the Decree, with evidence of compliance where necessary.

Therefore, the Court will resolve this issue in the following manner. The Court will grant the parties' motion, in part, by vacating the first sentence of Paragraph R of the consent Decree. However, I will not order paragraph 3 of the stipulation. Instead, I suggest to the parties that one of the following three options is more appropriate:

> If one or both parties believe that compliance has been achieved with respect to a provision or set of

provisions, the party or parties may propose to the Court that the provision(s) be vacated on the grounds that consistent compliance with such provision(s) has been achieved.

If Defendants desire to modify a provision of the State Plan, they shall follow the procedures set forth in paragraphs I and J of the Consent Decree. These paragraphs promote deference to Defendants unless constitutional issues are implicated.

If one or both parties believe that a provision should be modified, a motion to modify the Decree, based on the argument that constitutional requirements have been met with respect to that provision, is not precluded by the Court or the Decree.

The preceding alternative language, in conjunction with vacating the first sentence of paragraph R, permits the parties to file future motions to modify or terminate portions of the Decree or its associated plans without the constraint imposed by the first sentence of paragraph R.

Evidence of Compliance

The parties' motion is based, in part, on assertions by the parties about the state of compliance with respet to the provisions involved. However, the evidence to support these assertions may not, in some instances, be current. The Consent Decree requires the submission of compliance reports every six months. However, in recent years the Court has extended the deadlines for filing such reports so that they coincide with preparation of evidence for compliance

hearings and to reduce the burden of compliance reporting on the Defendants. As a result, no compliance report on provisions not relating to medical and mental health care has been filed since January, 1991. Furthermore, the July 1991 Stipulation -- which was approved in lieu of further compliance hearings on issues related to fire safety, sanitation and personal hygiene, crowding and protection from harm, and access to courts -- referenced plans that included deadlines for future completion of projects. The record does not reflect the current status of these projects, some of which, according to the Defendants' proposed schedules, are not yet complete. Therefore, the Court will enter an order requiring a compliance report to be submitted by the Decree Compliance Coordinator.

Sequence of Consideration
of Provisions for Dismissal

A review of compliance with the Consent Decree is a major undertaking. Generally, medical and mental health issues are reviewed in one hearing, and the remaining issues in another hearing. Typically, preparation for each hearing begins with compliance reports by the Defendant, followed by inspections and reports by the parties' experts and the Court's Independent Expert, followed by deadlines for motions and other submissions by the parties. The parties have frequently requested extensions of deadlines in order to coordinate schedules and to fully prepare reports and submissions. In the history of this case, the entire cycle of two such reviews has taken at least one year. The Court believes, however, that to properly consider this motion, portions

of the motion should be considered in sequence.

Medical Care compliance has always been considered in conjunction with Mental Health Care compliance. The reason for joint consideration is that mental health care, as a form of medical care, is inextricably related to medical care. Furthermore, some forms of non-compliance with respect to mental health care can also represent violations of medical care provisions, and the proper consideration of the evidence may necessitate testimony with respect to both medical and mental health care. Therefore, the Court will defer consideration of the portions of the motion relating to medical care, until they can be jointly considered with a motion relating to mental health care, when compliance with mental health provisions

has been achieved.

The Court recognizes that a complete assessment of compliance at the State Prison of Southern Michigan (SPSM), which is a massive prison complex housing over 5,000 prisoners, will require a substantial commitment of time and resources by the parties. The Court also recognizes that the achievement and maintenance of compliance at SPSM has been problematic in the past. Further, I note that the Defendants are in the final stages of agreement on the Section VIII provisions of the Consent Decree entered in Hadix v. Johnson, No. 80:CV:73581.

The Court believes that implementation of Section VIII may constitute a substantial change in physical and operational conditions at SPSM that would warrant dismissal of USA provi-

sions relating to fire safety, sanitation and personal hygiene, crowding and protection from harm, and access to courts, in favor of the provisions of the Hadix Decree and associated plans, including Section VIII. Accordingly, with respect to the State Prison of Southern Michigan, I will defer consideration of those portions of the motion relating to fire safety, sanitation and personal hygiene, crowding and protection from harm, and access to courts, until after completion of hearings or decisions relating to the Marquette Branch Prison (MBP) and the Michigan Reformatory (MP). The Court will then schedule a final compliance assessment for SPSM or entertain motions to terminate jurisdiction at SPSM (for provisions other than mental and medical health) based on substantial change

expected from the implementation of Section VIII of Hadix. The Court notes that, in the Opinion and Order of the Court, dated December 2, 1985, the Court granted the Hadix plaintiff the right to intervene for the express purpose of moving to exclude from this Court's jurisdiction those portions of the SPSM subject to the Hadix decree. Although the Court denied such a motion in 1985, the motion was denied without prejudice to refiling it in the future.

Pursuant to the foregoing discussion, the initial consideration of the joint motion to dismiss portions of the Consent Decree will concern the portions of the motion that relate to fire safety, sanitation and personal hygiene, crowding and protection from harm, and access to courts, at the Marquette Branch Prison and at the Michigan Reformatory at Ionia.

/s/
RICHARD A. ENSLEN
United States District
Judge

Dated: July 2, 1992

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. STATE OF MICHIGAN, et al., Defendants,	Civil No. G84-63-CA HON. RICHARD A. ENSLEN

STIPULATION OF DISMISSAL AS TO ALL ISSUES EXCEPT FOR MENTAL HEALTH

The parties to this action, the United States of America, Plaintiff, and the State of Michigan, et al., Defendants, stipulate and agree that:

1. On July 16, 1984, the Court entered a Consent Decree to assure constitutional conditions within Michigan's prisons in the following areas:

a. Medical and Mental Health Care;

b. Fire Safety;

c. Sanitation, Safety and Hygiene;

d. Crowding and Protection from Harm; and,

e. Access to Court and Legal Mail.

2. The parties stipulate that the termination clause of the Consent Decree entered July 16, 1984, ¶R at 5, which requires compliance with all the terms of the Decree prior to termination of Court jurisdiction, is hereby vacated.

3. The parties stipulate that termination of the Court's jurisdiction may be sought by either party as to any provision of the Decree when Defendants are in compliance with constitutional requirements.

4. Over the intervening years, the parties have monitored Defendant's compliance with the Consent Decree, the State Plan for Compliance and additional plans and orders entered in this case. The parties now agree and stipulate that

Defendants are in substantial compliance with the Consent Decree and have achieved the goal of the Decree by assuring at least constitutional conditions with respect to: medical care; fire safety; sanitation, safety and hygiene; crowding and protection from harm; and, access to courts and legal mail.

5. The parties agree that all outstanding mental health issues in this case have been addressed in the Stipulation Regarding Mental Health Issues filed April 20, 1992. The parties contemplate that by June 15, 1993, Defendants will have achieved substantial compliance with the Stipulation Regarding Mental Health Issues filed April 20, 1992, and that at that time either party, jointly or unilaterally, may seek termination of the mental

health provisions of the Consent Decree. Nothing in this Stipulation should be construed as an admission that constitutional violations currently exist as to mental health care.

6. Accordingly, inasmuch as the parties agree that Defendants have met constitutional conditions in the areas of Medical Care; Fire Safety; Sanitation, Safety and Hygiene, and Crowding and Protection From Harm; Access to Courts and Legal Mail, the parties agree that the Consent Decree should be dismissed and jurisdiction and supervision of the Court terminated as to those issues.

Respectfully submitted,

For the United States:

JOHN R. DUNNE
Assistant Attorney General
Civil Rights Division

JOHN A. SMIETANKA
United States Attorney
Western District of Michigan

/s/
Mellie H. Nelson
Laurie J. Weinstein
Timothy R. Payne
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Attorneys
U.S. Department of Justice
Civil Rights Division
Special Litigation Section
P. O. Box 37076
Washington, D.C. 20013-7076
(202) 514-6408

Date: April 27, 1992

For the State of Michigan, et al.:

FRANK J. KELLEY
Attorney General

STATE OF MICHIGAN

/s/
Susan Przekop-Shaw
Barbara A. Schmidt
Assistant Attorneys General
Corrections Division
Attorneys for Defendants

Date: April 29, 1992

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. STATE OF MICHIGAN, et al., Defendants.	)	No. G-84-63 Honorable Richard A. Enslen

JOINT MOTION OF THE UNITED STATES AND STATE OF MICHIGAN TO DISMISS PORTIONS OF THE CONSENT DECREE

The United States of America, Plaintiff, and the State of Michigan, et al., Defendants, pursuant to Rules 60(b)(5) and (6), Federal Rules of Civil Procedure, move the Court to dismiss the provisions of the Consent Decree filed on July 16, 1984, with which the parties agree that Defendants are in substantial compliance, and have achieved the goals of the Decree by assuring at least constitutional conditions. These provi-

sions pertain to: medical care; fire safety; sanitation, safety and hygiene; crowding and protection from harm; access to the courts and legal mail.

The parties further move the Court to approve the modification of paragraph R of the Consent Decree to read:

> Termination of the Court's jurisdiction may be sought by either party as to any provision of the Decree when Defendants are in compliance with constitutional requirements.

Filed simultaneously with this motion is the parties' "Stipulation Of Dismissal Of All Issues Except Mental Health." The Stipulation sets forth the parties' position that Defendants are in substantial compliance with the Consent Decree and have achieved at least constitutional conditions with respect to the issues pertaining to medical care; fire safety; sanitation, safety and hygiene; crowding and protection from

harm; access to the courts and legal mail. Furthermore, the Stipulation replaces the termination clause (Paragraph R) of the Consent Decree and allows termination as to specific provisons (sic) as set forth above. Nothing in this motion or accompanying memorandum of law in support of this motion should be construed as an admission that constitutional violations currently exist as to mental health care issues.

The Court is respectfully referred to the accompanying memorandum of law in support of this motion.

Respectfully submitted,

For the United States:

JOHN R. DUNNE
Assistant Attorney General
Civil Rights Division

JOHN A. SMIETANKA
United States Attorney
Western District of Michigan

/s/
Mellie H. Nelson

Laurie J. Weinstein
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For the State of Michigan, et al.:

FRANK J. KELLEY
Attorney General

STATE OF MICHIGAN

/s/
Susan Przekop-Shaw
Barbara A. Schmidt
Assistant Attorneys General
Corrections Division
Attorneys for Defendants

Date: April 29, 1992

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	No. G-84-63
v.	)	
	)	Honorable
STATE OF MICHIGAN, et al.,	)	Richard A. Enslen
	)	
Defendants.	)	
	)	

MEMORANDUM OF LAW IN SUPPORT OF THE JOINT MOTION OF THE UNITED STATES AND THE STATE OF MICHIGAN TO DISMISS PORTIONS OF THE CONSENT DECREE

Pursuant to Rules 60(b)(5) and (6) of the Federal Rules of Civil Procedure, the United States, Plaintiff, and the State of Michigan, et al., Defendants, move this Court to dissolve all provisions of the Consent Decree approved by the Court on July 13, 1984, and filed on July 16, 1984, with the exception of the provisions relating to the mental health care of seriously mentally ill inmates.

In the Stipulation Of Dismissal Of All Issues Except Mental Health attached hereto as Exhibit 1, the parties agree and stipulate that Defendants are in substantial compliance with the Consent Decree and have achieved at least constitutional conditions with respect to: medical care; fire safety; sanitation, safety and hygiene; crowding and protection from harm; access to courts and legal mail. For these reasons, the parties jointly seek to dismiss the Consent Decree as to these issues.

Background

The United States brought suit on January 18, 1984, against the State of Michigan and a number of state officials pursuant to the Civil Rights of Institutionalized Persons Act of 1980, 42 U.S.C. § 1997 et seq. The Complaint alleged that conditions of confinement

at three state prison facilities deprived persons confined therein of rights secured by the First, Sixth, Eighth and Fourteenth Amendments to the United States Constitution. Complaint at 1-2. The prisons involved are the State Prison of Southern Michigan (including the Reception and Guidance Center), located in Jackson, Michigan; the Michigan Reformatory, located in Ionia, Michigan; and the Marquette Branch Prison, located in Marquette, Michigan. Instead of proceeding to litigation, the action was settled by a Consent Decree negotiated between the United States and Michigan, approved by the district court on July 13, 1984, and filed on July 16, 1984.

The Consent Decree addresses constitutional requirements in the areas of medical and mental health care, fire

safety, sanitation and personal hygiene, crowding and protection from harm and access to courts. Paragraph 2 of the Decree provides that the provisions of the decree are intended to assure the constitutionality of the conditions without any admission that unconsitutional (sic) conditions exist.[1] The "State Plan for Compliance" (State Plan), attached to the Consent Decree, sets forth specific measures that the State intended to take at the consent decree facilities. In addition, the State Plan provided deadlines for the State to submit additional plans to improve various conditions not specifi-

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[1]The Court of Appeals confirmed the need to maintain the goal of the Decree by addressing only matters that may be constitutionally significant. United States v. State of Michigan, 940 F.2d 155, 167-168 (6th Cir. 1991).

cally detailed in the State Plan.[2]

In October 1985, the Court, citing difficulty in determining the state of compliance from submissions by the Defendants and the United States, appointed an Independent Expert to monitor the Defendants' compliance with the consent decree and state plans. U.S. v. Michigan, 680 F. Supp. 928, 962 (W.D. Mich. 1987). Following the appointment of the Independent Expert, the Court

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[2]Section K of the Consent Decree provides that these additional plans would be designed and submitted by defendants. The United States had the opportunity to approve or reject the plans. These plans were to be appended to the State Plan and "subject to enforcement in accordance with the provisions of the decree." Consent Decree, Para. K, at 9. From time to time when issues arose which required additional remedial actions by defendants, the Court would order defendants to develop other plans which were treated in the same manner. All such plans are referred to as "Section K plans" in subsequent court orders.

held biannual compliance hearings.[3] In 1989, instead of a hearing every six months, the Court changed the schedule for compliance hearings to one every nine months. In fact, because the parties have resolved pending issues prior to scheduled hearings, no regularly scheduled compliance hearing has been held since the hearing in October 1990.

The United States' most recent compliance monitoring found no constitutional deficiencies in the areas of fire safety (Report of George Gray, February 25-27, 1991), sanitation (Report of Bailus Walker, March 17-18, 1991), medical care (Report of Charles Braslow,

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[3]The issues to be monitored were divided up by sections of the Consent Decree. The Spring hearing generally addressed Fire Safety, Sanitation and Protection from Harm and the Fall hearing generally addressed Medical and Mental Health Care.

October 1991), protection from harm (report of Eugene Miller, March 15, 1991) or access to the courts. Examples of the Defendants' progress are numerous. Major renovations have been accomplished to the physical plant of the consent decree institutions, including the installation of integrated fire alarm systems and sprinklers, and Defendants have either finished or committed funds to finish plumbing and ventilation projects throughout the facilities. Defendants have constructed a new medical facility which has been accredited by the Joint Commission on Accreditation of Hospital Organizations. The level of violence is down, specifically because of defendants' actions (Miller Report, at 17). Therefore, on the basis of the United States' expert reports and after reviewing the Independent Expert's

Reports, the United States concludes that the Defendants have achieved substantial compliance with the Consent Decree and State Plan requirements and have achieved the goal of the Decree by assuring at least constitutional conditions in the areas of fire safety, sanitation, medical care, protection from harm and access to the courts.[4]

As noted, the parties have agreed that because of Michigan's substantial compliance with these various Consent Decree provisions, the parties have agreed that dismissal of those provi-

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[4]Of the requirements in the Consent Decree, only one area remains of concern to the United States -- the provision of mental health care to seriously mentally ill inmates. On April 20, 1992, the United States and Defendants moved this Court to enter, as a court order, a stipulation under the continuing jurisdiction of the Court designed to resolve all remaining mental health care issues. See Stipulation Regarding Mental Health Issues.

sions is warranted.[5] However, because the "termination clause" of the Consent Decree does not permit dismissal until all Consent Decree requirements are met, the parties have agreed to vacate that provision and substitute a new "termination clause" which permits termination of court jurisdiction "when Defendants are in compliance with constitutional requirements." See Exhibit 1, ¶¶ 2-3.[6]

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[5]Indeed, as we show below, under existing law, dismissal is mandated where substantial compliance has been achieved.

[6]In Rufo v. Inmates of Suffolk County Jail, ___ U.S. ___, 60 U.S.L.W. 4100, 4104 n.7 (1992), the Supreme Court anticipated that parties, like the parties here, should consent to such a minor change in an extraneous detail without resorting to the courts. Courts, of course, may modify a consent decree when the parties agree to the modification. Heath v. DeCourcy, 888 F.2d 1105, 1108 (6th Cir. 1989) (consent decrees arrived at by mutual agreement of the parties in area of institutional reform litigation should be modified using a flexible standard); Williams v. Vukovich, 720 F.2d 909, 920 (6th Cir. 1093); Stotts v. Memphis Fire Dep't. 679 F.2d 541, 560-61 (6th Cir. 1982), rev'd on other grounds, 467 U.S. 561 (1984).

ARGUMENT

There is no dispute that Defendants are in substantial compliance with the Consent Decree and have achieved at least minimum constitutional conditions with respect to the conditions which are the subject matter of this motion. The parties have so agreed and stipulated. Stipulation of Dismissal of All Issues Except Mental Health, ¶ 2. Under these circumstances, the Court's jurisdiction over conditions at issue in this litigation with the exception of the mental health care issues -- is at an end. Youngblood v. Dalzell, 925 F.2d 954 (6th Cir. 1991).

In Youngblood, the U.S. Court of Appeals for the Sixth Circuit considered whether the district court should continue to supervise a city fire department pursuant to an employment

discrimination consent decree entered some fifteen years earlier. The court relied on Pasadena City Board of Education v. Spangler (Spangler), 427 U.S. 424 (1976), to confirm that a court's continuing jurisdiction over a consent decree entered as an order of the court should be terminated when there is no dispute that the objectives of the decree have been achieved. Youngblood, 925 F.2d at 958, 960.

In Spangler, the Supreme Court considered the scope of a district court's remedial authority in the context of a school desegregation order where it was undisputed that the defendant school district had accomplished one objective of the district court's desegregation order. Spangler, 427 U.S. at 431, 436-37. The Court held that where the defendant had achieved one of the objec-

tives of a multi-faceted order, the district court had no further remedial authority with regard to that aspect of the school system. Id. at 436-37. The Court further held that, as to the accomplished objective, the injunction must be dissolved. Youngblood, 925 F.2d at 958, citing Spangler, 427 U.S. at 436-37.

Dismissal of those portions of the Consent Decree with which Defendants are in substantial compliance would also be consistent with the Supreme Court's recent decision in Freeman v. Pitts, ___ U.S. ___, 60 U.S.L.W. 4286 (1992). In Freeman, where the extent of compliance with a school desegregation order was in dispute, the Court held that

> upon a finding that a school system subject to a court-supervised desegregation plan is in compliance in some but not all areas, the court in appropriate cases may return control to the school system in those areas where compliance has been achieved, limiting further judicial supervi-

> sion to operations that are not yet in full compliance with the court decree.

Id. at 4293. To reach that result, the Freeman Court analyzed the district court's task in cases, like the present case, involving equitable remedies to repair the denial of a constitutional right. The Court held that in such cases, where some of the objectives of a court-ordered plan have been accomplished, the district court's partial withdrawal of its supervision and control over those portions of the plan is consistent with the court's duty to remedy the constitutional violations and then restore state and local authorities to the control of their institution. Id. at 4292. Withdrawal of control over areas where supervision is no longer needed also permits a district court to concentrate its resources and Defen-

dants' resources on areas where compliance has not yet been achieved. Id. at 4293.

To provide guidance to the district courts, Freeman enumerated three factors that should be weighed before ordering partial withdrawal: 1) whether there has been full and satisfactory compliance with the decree in those aspects where supervision is to be withdrawn; 2) whether retention of judicial control is necessary or practicable to achieve compliance with the decree in other facets where there is not yet compliance; and 3) whether defendants have demonstrated their good faith commitment to the court-ordered decree and to those provisions of the Constitution that were a predicate for judicial intervention in the first instance. Id. In this case, all three factors point to a determina-

tion that partial vacation of the consent decree is warranted.

As to the first factor, the parties have stipulated that Defendants have satisfactorily complied with the decree in those aspects where supervision is requested to be withdrawn. Mental health care, which remains under the Court's jurisdiction pursuant to the parties stipulation filed on April 20, 1992, is a discrete area and is not tied to the areas where supervision is requested to be withdrawn. Thus, the Court need not retain judicial control over unrelated issues to achieve compliance with that stipulation. Finally, Defendants have demonstrated their good faith commitment to the consent decree as evidenced by the fact that in its most recent compliance monitoring tours, the United States found no constitu-

tional deficiencies in the areas which are the subject of this motion.

Conclusion

Because the parties have stipulated that dismissal of all issues addressed by the Consent Decree with the exception of the mental health care issue is appropriate, and because Spangler, Youngblood, and Freeman support this Court's partial dissolution of the decree, the Consent Decree should be dismissed with respect to: medical care; fire safety; sanitation, safety and hygiene; crowding and protection from harm; access to courts and legal mail.

Respectfully submitted,

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Date: April 29, 1992

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Civil
v.	)	Action No.
	)	G84-63CA
STATE OF MICHIGAN, et al.,	)	
	)	
Defendants.	)	
	)	

CONSENT DECREE

The parties to this action by and through their respective counsel, stipulate and agree that:

1. Pursuant to the Civil Rights of Institutionalized Persons Act of 1980, 42 U.S.C. § 1997, the United States has standing to institute an action against the State of Michigan and its officials in order to remedy alleged egregious and flagrant conditions which violate the constitutional rights of persons confined at the State Prison of Southern

Michigan ("SPSM") at Jackson, including the Reception and Guidance Center ("RGC"), the Michigan Reformatory ("MR") at Ionia, and the Marquette Branch Prison ("MBP") at Marquette, including the Michigan Intensive Programming Center ("MIPC"). The United States has conducted an investigation of these institutions, in which state officials gave full cooperation and demonstrated a commitment to the provision of constitutional conditions at the institutions, and has notified state officials of its findings.

2. To avoid litigation and without making any admissions on the merits, state and federal officials consent to the following Decree. The provisions of the Decree are intended by the parties to assure the constitutionality of the conditions under which prisoners are

incarcerated in the subject prisons.

3. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1345. All prefiling requirements stated in 42 U.S.C. § 1997 have been met.

NOW THEREFORE, upon the full and informed consent of the parties, in resolution of all claims asserted and relief sought, and without any finding of liability or other determination on the merits, it is hereby ORDERED, ADJUDGED, AND DECREED that defendants and each of them (hereinafter "defendants"), their officers, agents, agencies, employees, subordinates, successors in office, and all those acting in concert or participation with them shall comply with each of the following provisions:

A. Medical Care. Defendants shall

provide adequate medical, dental, and mental health services at SPSM, RGC, MR, MBP, and MIPC necessary to respond to the serious needs of prisoners in these areas.

To this end defendants shall provide:

1. Irrespective of offender classification, inmate access to adequate medical facilities and medical staffing including licensed, qualified physicians and psychiatrists, dentists, registered nurses, and such other medical personnel as defendants deem necessary;

2. Initial medical health assessment immediately upon incarceration;

3. Emergency medical care;

4. Measures to afford prevention of potentially epidemic contagions such as tuberculosis, aids, gonorrhea, and syphilis;

5. Adequate treatment upon timely identification for those inmates with serious mental illness, including manifest, substantial behavioral or physiological dysfunctions associated with psychosis, suicide, the threat of suicide, self-mutilation, or psychotic episodes involving violence towards others;

6. Reasonable protection measures for those inmates identified as suicidal or self-mutilating, including separate housing where necessary and adequate surveillance procedures;

7. Appropriate use and distribution of psychotropic medications, that fully comports with the standards of use and distribution in the medical profession;

8. Training programs as necessary for all professional staff; and

9. Professional medical record-

keeping systems.

Defendants shall achieve compliance with paragraph A by implementing each requirement by no later than July 1, 1985.

B. Fire Safety. Defendants shall take adequate fire prevention measures at SPSM, RGC, MR, MBP, and MIPC necessary to prevent serious threats to the lives and safety of the prisoners. To this end, defendants shall:

1. Immediately replace all polyurethane and flammable mattresses and all non-fire retardant materials with adequate fire-safe mattresses and materials;

2. Immediately install an appropriate number, as defined by a fire safety professional, of fire extinguishers and smoke detectors in all living and working areas;

3. Develop and implement a program for regular inspection of fire extinguishers and smoke detection units;

4. Immediately unblock and maintain continued clearance of all exit ways;

5. Provide emergency evacuation procedures;

6. Provide for immediate proper storage or removal of combustible materials; and

7. Implement such other safety precautions as are necessary to ensure adequate fire and smoke safety.

The defendants shall achieve compliance with paragraph B by implementing subparagraphs 1, 4 and 6 within thirty (30) days of the entry of this Decree, subparagraphs 2, 3 and 5 by December 30, 1984, and subparagraph 7 no later than June 30, 1986.

C. Sanitation, Safety, and Hygiene.

Defendants shall provide adequate sanitation, safety, and hygiene measures at SPSM, RGC, MR, MBP, and MIPC in order to prevent exposing prisoners to serious threats to their physical health and safety. To this end, defendants shall establish, maintain, and implement:

1. Housekeeping systems, to be operated and managed by qualified staff with designated responsibilities, to prevent filth, vermin and rodent infestation;

2. Systems to ensure safe and sanitary food service;

3. Sewage and waste-disposal systems, including appropriate solid waste disposal, to correct cross-connected plumbing and back syphonage hazards, unsanitary pipe chases, inadequate plumbing and fixture leaks;

4. Systems to ensure building

safety, temperature control and ventilation, and to provide for the elimination of electrical hazards and serious safety hazards in working areas and in other health hazard areas; and

5. Systems to ensure adequate lighting in all areas as necessary for safety and surveillance.

Defendants shall achieve compliance with paragraph C by implementing subparagraphs 1 and 2 by January 1, 1985, subparagraphs 4 and 5 by July 1, 1986, and subparagraph 3 by January 1, 1987.

D. Crowding and Protection from Harm. Defendants shall provide adequate housing, security, and inmate and staff supervision to prevent serious risks of physical assaults or harm to prisoners from others at SPSM, RGC, MR, MBP, and MIPC. To this end, Defendants shall:

1. Design and implement a pro-

fessionally-based classification plan;

2. Ensure adequate guard surveillance of inmates;

3. Develop and implement rules and procedures governing use of segregation housing units;

4. Develop and implement a program providing, as appropriate, for out-of-cell time for inmate exercise on some systematic or regularized basis in order to compensate for excessively crowded conditions of confinement; and

5. Take each and every step within their lawful authority to eliminate overcrowding.

Defendants shall achieve compliance with paragraph D by implementing subparagraphs 2, 3 and 5 by June 30, 1985, subparagraph 4 by June 30, 1986 and subparagraph 1 by June 30, 1988.

E. Access to Courts. Defendants

shall provide prisoners confined at SPSM, RGC, MR, MBP and MIPC with meaningful access to the courts. To this end, defendants shall specify and implement systems to afford inmates access to each respective law library facility, including provisions for access for inmates in segregation housing units. Defendants shall achieve compliance with paragraph E no later than December 30, 1984.

F. Legal Mail. Defendants shall establish systems, steps, and procedures to ensure protection of privileged legal mail from review at SPSM, RGC, MR, MBP, and MIPC.

Defendants shall achieve compliance with paragraph F no later than July 30, 1984.

G. Defendants shall provide training programs for all employees involved

in the implementation requirements of this Decree such that the provisions and requirements of this Decree shall be known and fully understood by said employees. All plans, systems, and other procedures developed pursuant to this Decree shall be similiarly (sic) known and fully understood by said employees and each employee shall be able, after going through the training program, to certify in writing that he or she has such knowledge and understanding. All such certificates shall be retained in each employees personnel file and provided to the United States upon request.

H. Defendants have developed their own comprehensive plan, entitled "State Plan for Compliance" (State Plan), specifying measures they intend to take at SPSM, RGC, MR, MBP, and MIPC in order to

assure constitutional conditions therein, and to address a number of other matters designed to improve conditions of confinement. Defendants intend to fully implement the State Plan unless implementation is excused or modified in accordance with the terms of this Decree. A copy of the State Plan is attached to this Decree as Exhibit A.

I. Implementation of the various provisions of the State Plan will be adequate to bring Defendants into full compliance and thereby satisfy the terms and provisions of this Decree. The Court shall be advised as to each failure to comply with the provisions of the State Plan and, on request of either party or on the Court's own motion, a hearing may be held as to the constitutional implications of said failure and Defendants' non-compliance. Nothing in

this Decree shall be interpreted as requiring Defendants to specifically comply with any State law, or any other provision of the State Plan that does not implicate constitutional rights of inmates.

J. Defendants shall report to the Court and to the United States any time they intend to modify their Plan, and shall advise the Court and the United States, by legal memoranda, whether the modification sought raises constitutional issues. The United States shall respond to such report within 20 days, by legal memoranda, whether it believes such a modification raises constitutional issues. The Court will then determine whether to conduct a hearing and will in such event determine the modification request. The United States Department of Justice will monitor com-

pliance with the State Plan.

K. The State Plan provides for a number of plans that the Defendants shall submit at specified times. Each plan shall be filed with the Court and submitted to the United States by the specified submission time. Each plan shall set forth a detailed statement of the measures that the Defendants will take to achieve timely compliance with the plan along with a detailed timetable setting forth dates for interim and final compliance measures. Each plan also shall establish a method for continuing maintenance of each item to be accomplished pursuant to the plan. Upon submission, the United States shall review the plan. If there is no objection to the Defendants' proposed plan, the plan shall be appended to the State Plan and subject to enforcement in

accordance with the provisions of this Decree. If the United States objects to any of the Defendants' proposed plans, the parties shall attempt to conciliate any differences among them. To the extent useful and feasible, the United States may provide technical assistance in this conciliation process. If necessary, the United States may commence hearings concerning unresolved objections to proposed plans within 60 days of raising objections.

L. Defendants shall file with the Court and submit to the United States semi-annual reports commencing December 31, 1984, indicating for each respective six month period the status of Defendants' compliance with respect to the requirements of this Decree. Each report shall state with particularity the conditions of each area addressed in

this Decree, and shall specifically identify all relevant documents. The report shall be signed and submitted by an individual designated by the Defendants to be responsible on an ongoing basis for this function.

M. Entry of this Decree shall not operate to render moot or otherwise preclude any issues before the District Court for the Eastern District of Michigan in Hadix v. Johnson et al., Civ. No. 80-73581, Jansson v. Johnson et. al., Civ. No. 84-CV-1263DT or the Western District of Michigan in Knop v. Johnson et. al., Civ. No. 84-651.

N. Upon notice and at reasonable times, Defendants shall give full access to the United States, its attorneys, staff, experts, and agents to all subject facilities to inspect for compliance with this Decree.

O. The parties by agreeing to this Decree do not intend to create any rights or obligations enforceable by inmates. It is nonetheless recognized that, for purposes of entry of this Decree, the Court has granted limited intervention to the plaintiffs in the pending action of Hadix v. Johnson et al., Civ. No. 80-73581, E.D. Michigan (the "Hadix plaintiffs"), and the plaintiffs in the pending case of Knop v. Johnson et. al., Civ. No. 84-561, W.D. Michigan (the "Knop plaintiffs"), to participate as amicus curiae. To the extent Defendants are required by paragraphs I, J, K and L of this Decree to furnish reports, plans, pleadings, memoranda or other documentation to the Court and the United States, an informational copy shall be provided at the same time to the amicus curiae. Any

responses of the United States, shall be similarily (sic) circulated. Within 20 days after receipt of said reports, plans, pleadings, memoranda or other documentation, Hadix and Knop plaintiffs may respond to the Court and parties as amicus curiae. Further, Hadix and Knop plaintiffs have a limited right, at the Court's discretion, to participate as amicus curiae at any hearing which may be called.

P. The United States may seek appropriate orders for enforcement of this Decree, but will not do so until first consulting with Defendants in an effort toward informal resolution of any dispute.

Q. The Court shall continue its jurisdiction of this matter until further notice. One year following entry of this Decree, specifically on June 21,

1985, at 9:00 a.m., the Court shall hold a hearing to determine whether the Decree, to the extent then implemented in accordance with the terms and provisions thereof, is fulfilling its stated purpose to bring SPSM, RGC, MR, MBP and MIPC into constitutional compliance. Should it be determined at such hearing that the Decree is in some respect deficient in its requirements, the Court may entertain motions for modification of the Decree so as to correct the deficiency. The Hadix and Knop plaintiffs may participate as amicus curiae in said hearing.

R. After Defendants have complied with all of the terms of this Decree, Defendants may apply to terminate the jurisdiction of this Court.

The Court, having fully considered the foregoing, is of the opinion and so

finds that the Consent Decree should be and hereby is entered as THE JUDGMENT of the Court and hereby permanently enjoins the Defendants, their officers, agencies, employees, subordinates, and successors in office, from continuing the alleged unconstitutional practices and acts complained of; and permanently enjoins Defendants from continuing to confine persons under complained of unconstitutional conditions and this is THE JUDGMENT of this Court.

IT IS SO ORDERED.

ENTERED on this 13th day of July, 1984, at Kalamazoo, Michigan.

/s/ Richard A. Enslen
United States District Judge

So Stipulated:

UNITED STATES OF AMERICA, Plaintiff

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EXHIBIT A

STATE PLAN FOR COMPLIANCE

The following Plan of compliance is to be undertaken at the State Prison of Southern Michigan, ("SPSM") the Reception and Guidance Center ("RGC") at Jackson, the Michigan Reformatory ("MR") at Ionia, the Marquette Branch Prison ("MBP"), and the Michigan Intensive Programming Center ("MIPC") at Marquette.

I. Measures with Respect to Sanitation, Safety, and Health

A. Environmental Sanitarian - The environmental Sanitarian will be in place by December 1, 1983 at each subject prison as a full-time, fully qualified professional.

The Environmental Sanitarian shall have responsibility for inspection and identification of environmental deficiencies regarding housing and food

service sanitation, including without limitation, rodent and vermin control. The Environmental Sanitarian shall report to the Warden, and is authorized to coordinate management resources to correct deficiencies of the above nature (including recommending for purchase and distribution of necessary services, supply, and equipment). The Environmental Sanitarian advises the Warden regarding appropriate action for preventing of problems in the area of sanitation.

B. Housekeeping - The Department shall implement at each subject prison their continuing housekeeping plan (Appendix A.I) in large part already in place. The plan shall be implemented within 90 days of the entry of the decree in U.S. v. State of Michigan, Civil Action No. G84-63CA, filed in the

United States District Court for the Western District of Michigan.

C. Inspection for Sanitation - The Department will obtain complete, annual inspections of the subject prisons by qualified non-corrections Building and Constructions Trades Inspectors, qualified non-corrections agricultural inspectors, and appropriate follow-up inspection or re-inspection. Said inspections shall inspect for compliance with all applicable state law in each area upon which this section (on Sanitation) touches and shall be reflected in a signed inspection report. This report shall be provided to the Michigan Department of Corrections promptly following each inspection.

As to each cited condition on each report, the Department of Corrections shall make all indicated corrections

within 60 days; unless funding requirements (including procedures for hiring and bidding) or purchase of equipment requires further time, not to exceed 180 days. In any event, correction shall be accomplished within a more rapid time if more rapid correction is required pursuant to this plan. As to any section of this plan the requirements of which are not yet applicable under the terms of the plan, the Department need not meet these corrections deadlines. On occasion, extraordinary measures might be necessary to make required corrections, and in such a case, these corrections shall be made within a reasonable time. When a correction is concluded, the Department shall so note and initial on the face of the inspection report.

D. Personal Hygiene of Prisoners - The Department shall implement at each

subject prison its continuing plan for personal hygiene of prisoners. The plan is attached hereto and incorporated herein as Appendix A.II.

E. Vermin Control - The Department shall implement at each subject prison its continuing plan to control vermin. This plan is attached hereto and incorporated herein as Appendix A.III.

F. Occupational Safety and Health - The Department shall continue in its program of consultation with MIOSH to ensure safety in prison work areas.

G. Requirement for Cell Lighting - The Department shall continue to house inmates only in cells with adequate operational, interior lighting. Only in the case of an emergency, as determined by the Warden and documented by him in writing, shall an inmate be placed in a cell where the lighting does not

function.

H.1. The Department shall provide sufficient duplex outlet receptacles for inmate use in each cell (one outlet) and dormitory. As an interim provision, with 90 days, the Department shall make available U-L approved extension cords to allow reasonable electrical service in each cell.

H.2. The Department shall provide adequate lighting - (10 footcandle ambient lighting and 20 footcandles for reading and work unless more in work areas are needed for safety) in housing and activity areas to enable inmates to read, and in work areas to assure safety; this includes for example, without limitation, 10 footcandles lighting on base activity areas in cellblocks, unless greater light is needed for planned activities for that area. This

provision shall not operate to reduce any requirement of the Michigan Building Code.

The items set forth in I.H.1 and I.H.2 will be accomplished as follows: at Marquette branch prison by July 1, 1984; at Michigan Reformatory by July 1, 1985, and a (sic) State Prison of Southern Michigan, by July 1, 1986, unless major increases in electrical generating and distribution are necessary at that facility, in which case at SPSM, this shall be accomplished by July 1, 1987.

I. WITHIN 90 DAYS AFTER THE IMPLEMENTATION OF THIS PLAN:

I.1. A solid waste disposal plan for all areas of each institution and suitable to each institution will be prepared by the Environmental Sanitarian. The plan will be fully imple-

mented within 180 additional days. With regard to solid waste containers, the plan will include, without limitation, provision for appropriate, safe, fire safe, clean solid waste containers in all areas, including housing areas.

I.2. On a continuing basis, the Department shall maintain pipe chases free of all standing water and filth; maintain, as properly closed, all sewer lines; and maintain, with proper plumbing fixtures, all clean-out ports.

I.3. On a continuing basis, the Department shall inspect windows and reasonably promptly replace glass where broken and missing. The Department may replace windows with other window systems provided that adequate natural light, ventilation, and protection against vermin is maintained. Lighting and ventilation shall be maintained as

required elsewhere herein. In the event of the adoption of any new window system, the Department shall screen all window openings. The absence of screening at present will necessitate greater efforts to limit the intrusion of birds and vermin.

I.4. The Department shall provide necessary sanitation on all prison farms and food production operations.

I.5. Other provisions of this plan to the contrary notwithstanding, the institutions will in their food service facilities meet all applicable requirements of the 1976 Food Service Sanitation Manual (U.S.P.H.S.). The Department shall comply with each item specified on Appendix E of the 1976 Food Service Sanitation Manual (U.S.P.H.S.).

I.6. Training - The Department will initiate professionally designed and

executed continuing training programs for both pre-service and in-service training for all employees and inmate-employees involved in the provisions of this decree Section I (on Sanitation), including the sanitaiton (sic) plans set out in Appendix A. Each training program will be required to be completed by the employee or inmate-employee, will be appropriate to the particular employee's or inmate-employee's responsibilities, and shall include a method for evaluating the employee's or inmate-employee's performance in the training program, which performance must be adequate for continued employment in this capacity.

J. WITHIN 180 DAYS AFTER THE IMPLEMENTATION OF THE PLAN:

J.1. Barbering - The Department will provide appropriate barbering facilities and equipment in each facil-

ity and shall maintain necessary sanitary conditions. No person shall be permitted to barber inmates without appropriate training in the public health aspects of barbering. Professional personnel, including the Environmental Sanitarian, familar (sic) with these public health areas, may provide such training.

J.2. The Department will reduce noise to 70 dBA day, 45 dBA night, where inmates are housed, and not more than 90 dBA in work areas for an 8 hour exposure period; not more than 85 dBA in eating areas; with the exception, however, that this section does not apply to 5-block at SPSM as it is presently constituted with at least on-half (sic) administrative segregation inmates. This exception is grounded on defendants' representation that administrative segrega-

tion inmates will be moved from 5-block or other similar blocks (in size) to a more suitable housing arrangement by January 1, 1988 and after that date, 5-block shall no longer be excepted from these requirements. The Department will continue their efforts to reduce noise levels in all areas to not more than 70 dBA, with the exception that special conditions inherent in work places necessitate limits not higher than 90 dBA for an 8 hour exposure period.

J.3. The Department will provide adequate hot (within 6°F of 110°F) and cold water in housing units for all cells, dormitories, sinks, showers and lavatories.

J.4. The Department will not, except in the case of a temporary emergency (in the determination of the warden as reflected in a written document signed

by him), house inmates in cells or dormitories where the temperature is unsafe in any season. Temperatures in activity areas similarly shall be maintained safe. The Department will monitor and record continuously the temperatures 1) on the base floors and highest galleries of all cell blocks and 2) in all dormitories or other housing areas.

J.5. The Department will correct and cover all exposed wiring, provide an operational switch (e.g., a pull chain) for cell lights in each cell, and correct all short-circuited wiring.

K. WITHIN 360 DAYS AFTER THE IMPLEMENTATION OF THE PLAN:

Ventilation of 7 cubic feet per minute shall be provided for each cell as measured at the cell grating. Required ventilation shall be measured at cell gratings.

In summer months, the Department will provide a mechanical exhaust system that operates to exhaust 54 cubic feet per minute per inmate in each cellblock as measured at the site of exhaust.

L. WITHIN 30 MONTHS AFTER IMPLEMENTATION OF THE PLAN:

L.1. The Department will correct and eliminate all cross-connected plumbing, including all potential back-syphonage hazards. Corrections shall be in accordance with acceptable codes or standards.

L.2. The Department will correct existing plumbing (including sewerage) and fixture leaks; and cease to house inmates in cells or other housing areas lacking operable, safe plumbing and fixtures, including a commode and a sink in each cell. Corrections shall be in accordance with acceptable codes or

standards.

L.3. Defendants shall provide 1 shower for every 15 inmates, in dormitories defendants shall provide 1 toilet for every 8 inmates and 1 drinking fountain per floor.

L.4. In the interim, the Department will take reasonable temporary measures, such as the addition of free chlorine to the drinking water, the monitoring of reports of disease related to plumbing condition, and appropriate testing of water, all to reduce the hazard of plumbing inadequacies.

II. Medical Care

A. General Provision

The standard for health care for prisoners supervised by the Michigan Department of Corrections has been established by administrative rule and policy. For the purposes of this plan,

defendants adopt as a standard, and they shall provide, medical services consistent with contemporary professional health care standards. This standard is entirely consistent with long-established Michigan corrections' policy. Each prisoner at the State Prison of Southern Michigan, Michigan Reformatory, or Marquette Branch Prison shall receive adequate health care as measured against contemporary professional standards.

B. Facilities

1. State Prison of Southern Michigan

The existing hospital facility at the State Prison of Southern Michigan is scheduled for replacement by early 1986 with a new 94-bed facility. Final building plans for the hospital shall be adequate to receive full approval by the Michigan Department of Public Health

Licensure Division. Because of the prison setting, variances might become necessary, but the services and practices shall be no less than those that would be required for licensure in a non-prison setting. Reconstruction or rehabilitation of dental and primary ambulatory care facilities in the central and south complexes currently is occurring, and shall be completed within a reasonable time.

By December 31, 1986, the Department will conclude construction and commence the operation of the hospital facility described above. In case of unavoidable construction delay, a reasonable rescheduling of the completion date not to exceed January 1, 1988, may be necessary. Within 2 months following the completion of the replacement facility, the Department will cease to use for

medical purposes the current hospital at SPSM. The new facility shall be accessible to all SPSM inmates, and shall be adequate to meet these inmates' serious medical and mental health needs, except to the extent that the Department provides appropriate care elsewhere. The facility shall, in addition, be adequate to meet the serious medical and serious mental health needs of any other person brought from elsewhere for care at SPSM.

In the interim at SPSM, while new facilities are being constructed, defendants shall continue to assure in the current SPSM hospital professionally sanitary and safe conditions, including the appropriate storage of anesthetic gases.

2. Michigan Reformatory and Marquette Branch Prison

Existing facilities at these two institutions generally adequate. By 60

days from the implementation of this plan, the Department will upgrade the health assessment area in the dormitory at MR. The area shall be equipped with an appropriate examining table, be kept professionally sanitary, and otherwise comply with minimal professional standards as necessary to protect inmate health.

C. Medical Screening

1. All prisoners, upon entry to the Michigan Department of Corrections, are given a physical examination by qualified medical personnel. A physician shall consult on each inmate received. Dental screening is performed by qualified dental hygienists. Where not already implemented, these procedures shall be implemented and continued.

2. Prior to transfer to another facility or other substantial travel,

each inmate shall continue to be evaluated by qualified health care personnel to assess suitability for travel or institutional reassignment.

3. Within 90 days from the implementation of the plan, the Department will submit a professionally designed plan pursuant to Section VI on Plans, by which they will take appropriate precautions to prevent the occurrence of potentially epidemic contagions such as tuberculosis, aids, gonorrhea, and syphilis. The plan shall provide for implementation within an additional 180 days after the approval or adoption of the plan.

D. Access to Health Care

1. Within 60 days from the date of the implementation of this plan the Department will submit a plan pursuant to decree Section VI on Plans, by which

all inmates will be afforded daily access on each weekday to a sick call register. Any inmate who registers for sick call shall within 24 hours receive an appointment to be seen by medical staff within a reasonable time given the particular medical complaint, except those registering on a Friday may have their appointments determined on the following Monday. Inmates shall be afforded direct access to a register, which health care staff then collect. The register shall provide an opportunity to request care for serious medical, serious mental health, and serious dental conditions.

The Department's plan for direct access to health care must provide at least equivalent daily access on weekdays for inmates in segregation units (administrative, punitive, protective

and MIPC. While the procedure may differ for such inmates, the access may be no less.

The Department's plan shall make adequate provisions to assure that inmates will be transported as needed from housing or other areas to the health care facility.

The Department's plan shall provide for implementation within 90 days after its adoption or approval.

2. No staff shall inhibit, interfere with, or delay any aspect of the health care delivery system.

3. Inmates brought for medical care from other prisons to the subject prisons will be treated promptly and returned to an appropriate penal facility.

4. Within 120 days of the implementation of this plan, the Department will

submit pursuant to Section VI on Plans a professionally designed emergency medical procedure. It shall be sufficiently specific to assure adequate emergency access to medical care from each area of each facility (e.g., SPSM - North Side, SPSM - South Side, etc.). Said plan shall be implemented within 90 days of its adoption or approval.

E. Staffing and Procedures

1. Professional staff are responsible to provide adequate medical care to meet each inmate's serious medical needs. The physicians are the health authority in all cases requiring medical judgment. Physicians shall assure continued, appropriate supervision and direction of all health care. To accomplish this supervision, the physician will meet appropriate contemporary professional standards for supervision,

including appropriate use of standing orders and protocols. Dental staffs are to be professionally supervised by dentists.

2. Uncredentialed staff (e.g., corrections medical aides), all of whom must be supervised, shall not be assigned to perform tasks which, under contemporary professional standards, require appropriate licensed, registered, accredited, or certified staff. Within 18 months after the implementation of this plan, uncredentialed staff are not to make triage decisions. Contemporary professional standards of care will be followed. Corrections medical aides may be used, if properly trained and supervised, as aides or technicians consistent with other provisions herein. The provisions of this paragraph to the contrary notwithstand-

ing, the Department may continue to employ corrections medical aides in their present functions for 18 months after the implementation of the plan.

3. Within 180 days after the implementation of this plan, the Department will employ and maintain employed medical and dental care staffs at the subject institutions as follows:

	FTE Employees
State Prison of Southern Michigan	145
Michigan Reformatory	16.1
Marquette Branch Prison	29

The Department will allocate these positions to provide medical and dental care necessary to meet the inmates' serious medical and serious dental needs on a continuing basis. The staffing requirement of SPSM (145 FTE's) is an interim requirement pending the completion of the new hospital facility at that institution as further defined in Section

II.B.1. Staffing for SPSM after the completion of the new facility is discussed below.

4. The Department may, after the implementation of this plan, make major reductions in prison population or initiate new programs by which certain health care services are provided to inmates of these institutions at other facilities. In such a case staffing may be amended pursuant to a plan, which the Department will submit pursuant to Section VI on Plans. Any revision will not diminish the quality of care received by inmates.

5. Staffing for mental health care, (including psychiatrists, psychologists, and those nurses, social workers, secretaries, and others involved in mental health care) is discussed elsewhere herein. The FTE staffing positions

required in this subsection (II.E) are to be used to provide only medical and dental care and to provide care only at the subject facilities. In exceptional circumstances, staff may temporarily be employed elsewhere to accomplish necessary tasks.

6. Within 270 days after the implementation of this plan, the Department will submit, pursuant to Section VI on Plans, a staffing plan for the new facility to be constructed at the State Prison of Southern Michigan. This plan shall be professionally documented and designed. It shall provide a staff adequate to meet contemporary professional standards for staffing.

7. The delivery of health care services at MR is dependent on the services provided at the Riverside Correctional Facility. The Department

will accomplish those tasks necessary to assure adequate access to services at Riverside. The Department recognizes that a decrease in services provided at outside facilities to inmates at the subject prisons may require an increase of medical care staffing at the subject prisons to meet the required standards of contemporary health care professionals.

8. Inmates shall not be employed in direct patient care or in any support activity with the exception of supervised dental aides, other than in tasks such as housekeeping and laundry.

9. Health professions students or interns may be used in the delivery of health care; provided, however, they may be used only consistent with the following: 1) they may be used only commensurate with their level of training; 2)

they may be used only under direct professional supervision; and 3) they may be used only pursuant to professionally written policies and procedures.

F. The Department will provide medical and dental prostheses when necessary to meet the serious health needs of any inmate, consistent with professional judgment.

G. Within 120 days of the implementation of this plan, the Department will submit a professionally designed plan pursuant to Section VI on Plans, to provide for systematic follow-up care for inmates with serious chronic disease. Said plan shall be implemented within 120 days after approval or adoption.

H. Mental Health Care

This subsection concerns the care of serious mental illness. By serious mental illness, we mean manifest, substan-

tial behavioral or physiological dysfunctions asscciated with psychosis, suicide, the serious threat of suicide, self-mutilation, or psychotic episodes involving violence toward others. Excluded are mental retardation, personality disorders, psychosexual disorders, impulse control disorders, anxiety disorders, and other similar conditions.

The Department's current policy requires that care of serious mental illness meet contemporary professional standards. The Department shall take those additional steps necessary, if any, to meet these standards. These standards are understood to include the provision of reasonable protection of suicidal or self-mutilating inmates from suicide or self-mutilation.

1. The subsections on staff supervision (II.E.1), staff credentials

(II.E.2), outside alternative care (II.E.4), staffing at the new hospital at SPSM (II.E.7), uncredentialed staff (II.E.2), training (II.I), medication distribution (II.K), and records (II.L), shall apply to the provisions of care for serious mental illness. Specific provisions of this subsection (II.H) on mental health care further explicate these general provisions for a mental health context.

2. The Department will include in the new hospital at State Prison of Southern Michigan described above in II.B.1, a 21-bed fully licensed psychiatric unit for treatment of serious mental illness. The services and practices shall be no less than those that would be required in a non-prison setting.

3. Within 1 year from the implementation of this plan, defendants shall

provide for each subject prison suitable separated housing adequate to house every inmate who exhibits a serious threat of suicide or who attempts suicide. This housing area shall be staffed continuously, 24 hours daily, by staff appropriately trained pursuant to a professionally developed training program. It shall be equipped to allow continuous, 24 hour daily observation of each inmate housed in this area. The present equipment for observations of Marquette's Brooks Center is adequate and may serve as an appropriate model elsewhere. Seriously mentally ill persons shall be housed only in appropriate housing and, absent a determination in writing by a psychiatrist, shall be housed in a segregated housing area, separate from all non-patient inmates. The Department will establish an appro-

priate professional protocol for suicidal inmates.

4. At its discretion, the will Department (sic) deliver inpatient services for serious mental illness (other than screening, observation, emergency care, and suicide care and prevention) at a central, fully licensed facility: the Riverside Psychiatric Center, in Ionia, Michigan, and at other locations. Within 270 days after the implementation of this plan, the Department shall submit a professionally designed plan, pursuant to Section VI on Plans, to assure that prisoners with serious mental illnesses have adequate access to the Riverside Psychiatric Center or to other similar facilities fully licensed or operated by the Michigan Department of Mental Health. The decision to admit patients to inpatient services shall be

based upon professional mental health criteria in a stated uniform policy. The plan shall provide access to the inpatient care facility, except for involuntary admissions, within 48 hours after diagnosis for those needing inpatient care for serious mental illness. The plan shall provide for systematic outpatient care, follow-up care, as well as continuity of care for inmates with serious mental illness. The plan shall include appropriate provision for staffing for outpatient services and staffing for inpatient services to be available to each inmate for care of serious mental illness. Staffing provisions shall meet contemporary professional mental health standards to provide necessary outpatient psychiatric and psychological care for seriously mentally ill inmates.

The plan shall provide for full and

continuous implemention (sic) of the entire said plan within an additional 3 years after its adoption or approval. Interim measures not requiring major reconstruction, renovation, or new construction shall be implemented within 1 year after the plan's adoption or approval. Established state funding procedures for staffing appropriations might require additions to the time allotted for interim staffing measures not to exceed an additional 6 months.

5. Access to mental health services for serious mental illness shall be available through the system set out in ¶ II.D of this Section on Medical Care. In a case where a correctional officer reports that an inmate might be seriously mentally ill, defendants shall provide immediate access to professional mental health staff.

6. At least twice monthly at each subject prison, a clinical psychologist or psychiatrist shall visit each housing unit that houses any segregation inmate (protective, punitive, or administrative), and at the Michigan Intensive Program Center such visits shall be weekly. On these visits, the psychiatrist or psychologist shall take appropriate steps to be informed of the mental health status of the inmates housed in these areas (including, e.g., discussions with staff and inmates and a review of the log). If the psychologist or psychiatrist observes conditions presenting serious threats to the mental health of the inmates, or any of them, he or she shall inform the Warden in writing of these conditions.

7. The initial assessment for psychotropic drugs shall be by a psychi-

atrist or in a mental health emergency by a physician. Defendants shall take all necessary steps to detect and control the side-effects of psychotropic drugs. They shall develop written protocols for the use of the various classes of psychotropic medications.

8. Defendants shall take appropriate measures to assure that psychiatric/medical care is coordinated with psychological care. This will include the coordination of record-keeping between psychiatrists and psychologists.

I. Training

1. Within 120 days after the implementation of this plan, the Department will submit a plan pursuant to Section VI on Plans, to provide appropriate in-service training at all health care staff (professional and non-professional). The plan shall be profession-

ally designed. Training shall be professionally executed on a continuing basis. The plan shall be implemented within an additional 90 days after it is adopted or approved.

Within 120 days of the implementation of this plan, the Department will submit a plan pursuant to Section VI on Plans by which correctional and other personnel are trained pursuant to a professionally designed and executed continuing pre-service and in-service training program to respond to health-related emergencies within a four minute response time. This training shall include, without limitation:

a) recognition of signs and symptoms of serious illnesses, and knowledge of action required in emergency situations;

b) administration of first aid and

cardiopulmonary resuscitation (CPR);

c) methods of obtaining assistance;

d) signs and symptoms of mental illness, mental retardation, and chemical dependency; and

e) procedures for patient access or transfer to appropriate medical facilities or health care providers.

The plan shall provide for this training to be accomplished within 270 days of the adoption of the plan.

J. Special Diets

Special therapeutic diets are provided for any prisoner by medical staff to require this service. Patients requiring these diets shall be housed only in a facility providing them. Prisoners who are confined to their cells at SPSM and MBP are delivered spe-

cial diet trays. Correctional officers may deliver medically prescribed diets; however, no inmate may deliver special diets. Inmates may carry food trays for special diets only under the direct, immediate supervision of a correctional officer.

K. Medication Distribution

Pharmaceutical services are and shall continue to be carefully controlled in conformity with state and federal statutes. At each institution, the dispensing and administration of medication is the responsibility of health care personnel. To be involved in delivering medication, correctional officers must be qualified by successful conclusion of specialized, professionally designed and executed training.

L. Problem-Oriented Health Records

Health records are maintained at

each institution in accord with the Modified Problem-Oriented Health Record format. Within one year of the implementation of this plan, the Department will take appropriate measures to assure that this medical record-keeping procedure has been and continues to be fully implemented.

M. Quality Assurance

The central Office of Health Care presently conducts audits of health care at the State Prison of Southern Michigan, Michigan Reformatory and Marquette Branch Prison. These audits shall be continued as follows:

1. Medical audits annually by physician reviewers and medical record administrators who shall examine retrospectively all death cases and a random sample of health records at each institution, assessing the quality of medical

decisions, the adequacy of medical supervision of care, and the quality of medical record documentation.

2. Administrative audits annually at each institution by Health Care administrators and persons qualified in various specialized support services to assess the organization of health services, quality and quantity of health care staff, adequacy of policies and procudures, (sic) processing of grievances, and inmate perception of quality of care. These audits also serve as the occasion for problem-solving and technical assistance to institutional staff.

3. Dental audits annually by dentist reviewers at each institution to assess the quality of dental care through observation of the clinic, review of charts, and inspection of a sample of patients who have been

treated.

4. Mental health audits annually by psychiatrists of the Office of Health Care or of an independent agency.

Consistent with principles of peer review confidentiality, a professional report shall summarize the findings of each audit, including an enumeration of any condition inconsistent with contemporary professional health care standards.

As to each cited condition of each summary report, the Department will make all indicated corrections within 90 days; unless funding requirements (including provisions for hiring and bidding) or purchase of equipment requires further time not to exceed 180 days. In any event, correction shall be accomplished within a more rapid time if more rapid correction is required pursu-

ant to this plan or otherwise by law. As to any section of this plan the requirements of which are not yet applicable under the terms of this plan, the Department need not meet these correction deadlines. It is recognized that on occasion extraordinary measures might be necessary to make required corrections, and in such a case, these corrections shall be made within a reasonable time.

Within 3 years after the implementation of this plan, where not already done, the Department will include in each audit conducted fully independent, outside professionals.

III. Fire Safety

The following fire safety provisions are an integrated system designed to achieve fire safety at SPMS, (sic) MR, and MBP. Each provision of this section

on fire safety depends on compliance with each of the other provisions, whether physical plant and equipment are involved or human skills are required.

With regard to facilities,

A. Within 60 Days from the implementation of this plan, the Department shall:

1. Unblock and keep clear all exit ways.

2. Cease storing any combustible materials in cellblocks or other housing areas, unless the storage occurs in an appropriate, fire safe storage cabinet or room. This includes without limitation ceasing storage, unless in appropriate, fire safe containers, of personal property above housing areas at MIPC, but does not include items in inmate cells for inmate use. This paragraph does not apply to inmate personal

property stored in the inmate's cell or, in the case of dormitories, in the inmate's immediate living area.

3. Remove from all cellblocks and other housing areas all combustible trash containers.

4. Remove and cease to use all polyurethane pillows, cushions, or other furnishings in all cellblocks and other housing areas.

5. Remove all cardboard and all other combustible materials from the bars of the cells in all inmate housing areas. The Department may in their discretion replace these materials with non-combustible materials.

6. Cease storing compressed gas cylinders unless and until, on a continuous basis, the storage complies with National Fire Protection Association Standards #56A and #56B.

B. Within 120 days from the implementation of this plan, the Department shall:

1. Provide in each cellblock in each institution a minimum of two fire extinguishers per floor or gallery, with one of the two extinguishers placed at each end of the respective floor or gallery (e.g., 10 extinguishers per block at SPSM and MR (I and J blocks) and 6 extinguishers per block at MBP). Water-type extinguishers are adequate.

2. Provide water flow alarms and valve supervision on all existing sprinkler systems and provide automatic alarms on all kitchen hood dry chemical systems.

3. Provide fixed dry chemical extinguishing systems for all operating range hoods in all kitchens.

C. Within 180 days from the imple-

mentation of this plan, the Department will submit professionally designed plans pursuant to decree Section VI on plans.

1. To provide smoke detectors in each cellblock or other housing area.

2. To provide adequate means of egress from places of assembly as defined in Article 2 of the BOCA Code. Both plans (III. C. 1, 2) shall provide for accomplishment of all necessary tasks within an additional 1 year and 6 months after adoption or approval of each plan and for continuous maintenance thereafter. In a documented case of unavoidable construction delay, a reasonable extension of construction deadlines not to exceed an additional 6 months may be necessary.

D. Within one year from the implementation of this plan, as to the inte-

riors of cellblocks and other housing areas, the Department will remove, or provide necessary fire suppression to protect all non-structural combustible materials, including cardboard, plywood, hardboard, and those found in cellblock guard shelters. As well, in all inmate use areas including cellblocks and other housing areas, the Department agrees that ceiling tiles and panelling will have a flame spread lower than 75 in exit ways and 200 in other areas, and they will remove nonconforming ceiling tiles and panelling; provided, however, that in sprinklered areas, it shall be adequate to meet the NFPA Class C requirements.

E. Within 2 years from the implementation of this plan, the Department will:

1. Provide in each housing area

gang locks that will allow for the remote immediate unlocking of cells. The Department may continue present top lock procedures. (Locking mechanisms are discussed in Section IV.G. of this plan, and the requirements set out there are additional to this requirement).

2. Provide in each cellblock or other housing area and in each activity, work, or indoor recreation area (including farm basement), no fewer than two operational remote exits with doors properly swinging to facilitate the flow of egress. To meet this requirement, each floor shall have a minimum of two exits; each room of 1,000 square feet or more shall have 2 exit access doors; and rooms of less than 1,000 square feet may have a single exit access door.

3. Provide at each facility for automatic transmission of fire alarm

signals to the control center, which will transmit the signal to the local fire department by means of specialized equipment.

4. Enclose stairs with 2-hour fire resistant construction in the following areas: 1) cellblocks I and J at the Michigan Reformatory; 2) central stair at SPSM Building 18 (school, administration, and shop); 3) central stair in SPSM Central Complex kitchen (3-story stair); and 4) both open stairs at MR-8 building (library, stores, hobby craft). Fixed wired glass vision panels shall be permitted in such partitions provided that they do not individually exceed 1,296 square inches in area and are mounted in approved steel frames.

5. Provide self-contained breathing apparatus sets so that two sets are readily available in each cellblock.

Breathing apparatus sets shall be installed in quick release wall mounts.

6. Pursuant to a professionally designed plan provide an adequate number of emergency lights to light all means of egress in each cellblock or other housing area and in each activity, work or indoor recreation area.

7. Provide 2-hour fire separation: 1) between all cellblocks; 2) between rotundas and cellblocks; 3) for the upper floor of the control room at MIPC; and 4) to separate the basement of SPSM 16-block from the stairs to the first floor. Fixed wired glass vision panels shall be permitted in such partitions provided that they do not individually exceed 1,296 square inches in area and are mounted in approved steel frames.

8. Provide magnetic hold-open devices on fire and smoke doors in areas

where these doors are kept open (e.g. infirmary at SPSM.)

9. Subdivide the basement of buildings 18 and 19 of the Central Complex of the State Prison of Southern Michigan with appropriate fire separations, and provide automatic sprinklers, all pursuant to a professionally designed plan.

10. Provide in all work, activity, and assembly areas (e.g., auditoriums, dining areas, gymnasiums, visiting areas) appropriate exit signs and directional signs.

11. Provide remote electric release locks on security grills on each gallery in each facility.

12. Provide smoke barriers (1 hour fire resistant construction) between sleeping areas and other areas in dormitories and farm barracks. Fixed wired glass vision panels shall be permitted

in such partitions provided that they do not individually exceed 1,296 square inches in area and are mounted in approved steel frames.

F. Within 180 days from the implementation of this plan, the Department will submit pursuant to Section VI on Plans, a professionally designed plan to equip all housing areas consistent with National Fire Protection Association Standard #13, with sprinkler systems adequate to provide sprinkler protection to each cell and to each dormitory or other housing Unit within the main walled prison structures. The plan shall provide for full implementation within an additional 30 months following the adoption or approval of the plan. This paragraph shall not apply to dormitories outside prison walls including farm barracks.

With regard to operations,

G. Within 180 days from the implementation of this plan, pursuant to Section VI on Plans, the Department will submit a professionally designed comprehensive, written fire safety operations plan.

1. The plan shall include without limitation the following: emergency procedures for each respective area that inmates might use or occupy as to each facility; evacuation procedures for each respective area of each facility; a systematic fire drill procedure; inspection and maintenance procedures for all equipment for fire emergencies or suppression; appropriate training of staff and inmates; inspection and control of fuels present in the prison; responsibility for and supervision of all fire safety measures and procedures;

coordination with local fire officials; and consultation with and appropriate inspection by the State Fire Marshal.

2. The training required in the plan shall include training of correctional officers to accomplish all emergency, drill, inspection, maintenance, or other tasks assigned to correctional officers pursuant to the plan. It shall include at least pre-service plus semi-annual refresher training on the use of fire equipment and at least pre-service plus annual refresher training on all emergency procedures. No correctional officer shall be assigned to any cellblock or other housing area without first knowing the fire safety procedures for that cellblock or housing area.

3. The fire drills required in the plan shall occur at least every fourth month in each cellblock or other housing

area, shall be unannounced, and shall require full evacuation (excepting in administrative segregation) of each area being drilled, except that staff may conduct a drill without evacuating inmates in those instances where, in the opinion of the warden reflected in a document signed by the warden, the evacuation of the inmates would be inconsistent with the necessities of prison order.

4. The training of inmates required in the plan shall be adequate to inform them of expected behavior in case of fire emergency, and it shall be given to each new inmate and then at least annually to all inmates.

5. The training of maintenance staff required in the plan shall be appropriate for the functions contemplated in the plan to be accomplished by

such staff members.

6. The plan shall require the prominent and permanent posting in each housing area of a fire evacuation procedure designed specifically for that housing area.

7. The plan shall require that keys necessary for evacuation of inmates shall be identifiable by both sight and touch and shall be immediately available to the correctional officer who is to coordinate evacuation of a particular housing area. An emergency set of evacuation keys shall be maintained at accessible locations within each institution.

8. All provisions of the plan shall be accomplished within one year after the adoption or approval of the plan and maintained thereafter.

H. Within 90 days after the imple-

mentation of this plan, the Department will:

1. For each facility, commence with local fire officials to assure that firefighters on each of their shifts may tour the facility annually. Prison officials shall coordinate with local fire officials concerning the security needs of the prisons in order to facilitate proper emergency planning.

2. At each prison, a professionally trained fire safety officer shall be responsible without limitation for fire safety and for the continuous implementation of the fire safety plan for that institution (pursuant to Section III. G. 1 once that plan is adopted), and the coordination of all required inspection, maintenance, and training.

3. Cease to house any inmate in housing areas where there is less than

the 24-hour per day physical presence of correctional officers. This requirement includes the quarantine unit at Marquette's Brooks Center as well as all other housing units.

4. For the interim, until the fire safety operations plan (pursuant to Section III. G. 1) is adopted, inspect and provide continuing proper operation of all present fire suppression or emergency equipment, including without limitation, sprinklers, standpipes, fire extinguishers, kitchen hood fire suppression systems, and self-contained breathing apparatus sets.

I. Reporting and Inspection Regarding Fire Safety

1. Beginning December 1, 1983, or as soon thereafter as this plan is implemented, the Department will obtain annual inspections by the Michigan State Police Fire Marshal Division to deter-

mine compliance with all provisions of this Section III concerning fire safety ("compliance report"). The findings of compliance inspection shall be reflected in a signed, written report. This report shall be provided to the Michigan Department of Corrections promptly following each inspection.

J. The Department of Corrections shall provide a system of at least monthly internal inspection and reporting, using a professionally designed, written checklist. The written lists, after completion, shall be retained for at least three years.

IV. Overcrowding and Protection from Harm

A. Provision of Adequate Space - This plan assumes continuation of single celling. Dormitories shall provide 60 square feet per inmate. Space requirements for administrative segregation are

set out elsewhere herein.

B. Housing Assignments - Within 1 year from the implementation of this plan, the Department shall submit a plan, pursuant to Section VI on Plans, to assure that the following groups each shall be housed outside of physical contact and, within reason, outside verbal contact, with inmates in housing areas assigned to other groups; provided, however, that punitive detention inmates may be housed in the same units as administrative segregation inmates, and that, if otherwise consistent with this plan and if medically appropriate, inmate-patients transferred from other institutions may be housed with non-patients of the same Michigan Department of Corrections classification. Subject to this proviso, these groups are general population inmates, protective cus-

tody inmates, administrative segregation inmates, punitive detention inmates, inmates undergoing reception processing, and inmates transferred from other institutions. The plan shall assure that only inmates classified as likely to be violent and no protective custody inmates may be assigned to dormitories.

The plan shall provide for full and continuous implementation of the entire said plan within an additional 3 years after its adoption or approval. Interim measures not requiring major reconstruction, renovation, or new construction shall be implemented within 1 year after the plan's adoption or approval. Established state funding procedures for staffing appropriations might require additions to the time allotted for interim staffing measures not to exceed an additional 6 months. As to SPSM

5-block, until six years after the implementation of this plan, general population inmates (excluding reception center and protective custody inmates) may be housed with administrative and punitive segregation inmates.

C. Staff - Staffing throughout the subject prisons for all relevant functions shall be adequate to comply with all provisions of this plan.

As to housing, in each cellblock and in each dormitory, a single staff employee shall be assigned accountability for all conditions for all three shifts within that block, including implementation of this plan. Within 270 days from the implementation of this plan, each such person shall be trained pursuant to a professionally designed training program to accomplish these responsibilities. Within 180 days from

the implementation of this plan, the Department shall provide the full staffing complements in each housing area as designated by the Department as of November 28, 1982 and approved by them on January 16, 1983. In a temporary emergency, blocks may be operated at staffing levels designated on those dates as critical. Where a change in design or function takes place in a housing area, the staffing may be adjusted if consistent with this plan to provide adequate services and protection, and the United States shall be notified of the adjustment.

D. Training - The provisions of this Section IV on Overcrowding assume the continuation of the Department's present training program or its substantial equivalent, including 40 hours per year of in-service training for custody

staff, managers, and supervisors.

E. Surveillance and Security - Present practice, which shall be continued, is that correctional staff circulates throughout each cell block to maximize surveillance. Rounds by correctional staff shall be organized and supervised to assure that each cell is directly observed by a correctional staff member at least once each hour on an irregular schedule, 24 hours daily.

F. Supervision and Inspection - The Department shall take those steps necessary to assure the effective supervision of all correctional employees. All staff shall be instructed promptly in the requirements of this plan.

The Department will conduct an annual audit of the subject prisons for compliance with the provisions of Section IV on Overcrowding and Protection

from Harm and other pertinent managerial factors. The audit shall consider as many sources of information as feasible, such as personal observation, grievances, inmate letters, and inmate and staff discussion. The audit team shall be reflected in a signed written report to be completed promptly.

As to each cited condition on the compliance inspection report, the Department will make all indicated corrections within 60 days; unless funding requirements (including procedures for hiring or bidding) or purchase of equipment requires further time not to exceed 180 days. In any event, correction shall be accomplished within a more rapid time if more rapid correction is required pursuant to this plan or otherwise by law. As to any section of this plan, the requirements of which are not

yet applicable under the terms of this plan, the Department need not meet these correction deadlines. The parties recognize that on occasion extraordinary measures might be necessary to make required corrections, and in such a case, these corrections shall be made within a reasonable time.

G. Locking Mechanisms - Within one and one-half years from the implemnetation (sic) of this plan, the Department shall provide and maintain thereafter in each cellblock for each occupied cell a fully operational lock. To be adequate, when locked, the lock must reasonably retain the cell door in a closed and locked position to protect the inmate. Excepted from this requirement are cellblocks housing only minimum security inmates, where, effective three years after implementation of this plan, cell

locks shall be repaired to the extent necessary for protection of the particular inmates housed in each such block.

H. Out-of-Cell Activity

The Department will make the following provisions for out-of-cell activity:

1. Excepting South Complex SPSM (minimum security), within two years from the implementation of this plan, the Department will provide an appropriate, safe indoor exercise facility at each prison adequately staffed and adequately equipped to allow each general population inmate access to year-round large-muscle exercise one hour daily, five days weekly. The current facility at SPSM Central Complex is adequate. In the interim, an hour of yard time shall be staffed and scheduled each day, five days weekly, for those inmates desiring to participate. When such indoor facil-

ities are available, they shall be used on days of inclement weather; and on other days yards shall be available. To the extent possible, scheduling for access to exercise shall be flexible enough to allow inmates to combine minimal exercise with other scheduled activities. Exercise in segregation is discussed in Section IV.J.5.

2. Within 180 days from the implementation of this plan the Department will submit a plan pursuant to Section VI on Plans that will provide increased out-of-cell activity. In designing its plan, the Department is to be accorded wide latitude. This is not to suggest that any particular activity (such as those listed below in this paragraph as examples) is itself required, nor is there an obligation to provide rehabilitative treatment or a job to any inmate.

Rather, the objective is to provide meaningful activity outside of cells on a limited basis. The plan may include, for example, access to reasonably-supplied general libraries, educational activities, industrial and other work activity, or religious activity. For whatever activities prison officials choose to provide, they shall provide reasonably adequate staffing, facilities, and equipment. Their plan shall provide access to these various activities such that at SPSM and MR, 75% of all inmates, and at MBP all general population inmates, may be active out of their cells and dormitories, including exercise, meal, shower, and law library time, no fewer than 7 hours daily on weekdays and 5 hours daily on weekends. The plan shall provide for full and continuing implementation within an addi-

tional 180 days after its approval or adoption.

I. Other Measures to Increase Inmate Protection From Harm - On a continuing basis, prison officials will assure ready inmate access to required grievance forms and assure confidential delivery of completed forms to appropriate prison personnel.

J. Administrative segregation, punitive detention, protective custody (generically termed "segregation") and Reception and Guidance Center (RGC)

All provisions throughout this plan apply with equal force to all segregation units except where express provisions to the contrary are stated.

1. If deemed necessary by the Deputy Warden for the safety of the segregation prisoner involved and if justified in writing by the Deputy Warden, requirements elsewhere set

out in this decree for the provision of mattresses, linens. shaving, other personal hygiene articles, a stool, and a writing space may be diminished only so long as and to the extent so necessary.

2. Prisoners in segregation and RGC shall continue to be served three meals per day, which are essentially the same meals as those served to general population. Food sanitation shall comply with all applicable provisions of the plan subsection on food sanitation, supra. Where prisoners are served food in their cells, provision is to be made for delivery of sanitary food at safe temperatures, also in compliance with the food sanitation subsection, supra, including the provision of food pass slots in all cells, not

less than 30 inches above the floor, each slot with a shelf wide enough to support a food tray and a slot high enough to allow the passage of the tray without food touching the slot. Food slots shall be cleaned daily.

3. In addition to other lighting requirements herein, within 1 year from the entry of this plan, the Department will provide that all segregation inmates can view natural light from their cells. Each cell in segregation will be furnished with a bunk above floor level, a writing space and a stool or other suitable seating arrangement. Inmates at MIPC are not included in this paragraph IV.J.3.

4. A supervisor of captain rank or above will inspect each unit daily

and record each visit and any unusual circumstances in the segregation log book. Members of the administrative segregation punitive detention housing team will visit each prisoner in each such unit daily, recording each visit and any unusual circumstances. A qualified member of the medical staff will make rounds in administrative segregation and punitive detention daily. Medical staff will visit more often than once per day as necessity dictates. Housing and custody staff shall continue to refer all matters of a medical or psychiatric nature to the medical staff. Unit staff shall continue to log in the unit log all complaints or indications of medical and psychiatric problems. The log shall be reviewed daily by

qualified medical staff. Prisoners will be provided with prescribed daily medication and with prosthetic devices, including eye-glasses, unless medical staff otherwise determines.

5. Within 1 year from the implementation of this plan, each prisoner in administrative segregation, protective custody, and the Reception and Guidance Center will receive the opportunity to engage in exercise away from his cell at least one hour per day, five days per week, including indoor exercise in inclement weather and outdoor exercise weather permitting. Indoor exercise need not be provided to those inmates who have been segregated or in Reception and Guidance fewer than 60 days in the preceding 180 day period. Any

restrictions on exercise are to be justified in writing by the Deputy Warden.

6. Programming in the following areas will be provided for prisoners in administrative segregation and protective custody: education, commissary, library, religion, counseling, and recreation. Such programs will be provided in a manner consistent with the safety of prisoners and good order of the institution. Each prisoner in segregation will be allowed to have access to reading materials of reasonable quality. Opportunity to borrow reading materials from the institution lending library will be provided. Excepting education, these programs similarly shall be made available at the Reception & Guidance Center.

7. At Marquette within 2 years from the implementation of this plan, at the Michigan Reformatory within 4 years from the implementation of this plan, and at SPSM within 6 years from the implementation of this plan, the Department shall cease housing segregation inmates in cells lacking adequate space, given the level of out-of-cell activity provided the Department's plans for renovation providing at least 60 square feet per inmate is adequate in every regard. Segregation inmates shall continue to be housed in single cells.

8. Consistent with the security of the institution, personal property in protective custody and administrative segregation shall be no more restricted than for general popula-

tion; although, in punitive detention and the Reception Center, personal property may be limited to books borrowed from the prison library and to inmates' legal papers and writing materials, of which inmates may not be deprived at any time. Clothing and personal hygiene articles are discussed elsewhere herein.

9. No inmate may be held in isolation (no sight or sound contact) from all other inmates for more than 2 days in any month, unless the isolation occurs for medical reasons in a medical area or unless the inmate is evaluated on a daily basis by a psychiatrist or a clinical psychologist who states in writing, that the inmate is not suffering serious harm.

10. Protective custody inmates shall be accorded substantially equivalent privileges (including activities, work, and recreation) to those accorded to general population inmates unless prison or inmate security demands a reasonable reduction in (or, if reasonably necessary, an elimination of) the privileges given the cost and circumstances involved in providing similar privileges.

V. Access to Courts

1. The Department will continue to implement fully the law library policy under which each general population inmate is guaranteed at least 6 hours per week of law library use, in two-hour segments. To accommodate this use, law libraries are open at least 25 hours per week, half of which is on evenings and

weekends. The law library remains open additional hours if necessary to meet inmate needs. Prisoners who have pending court cases which require additional law library time in excess of the 6 hour guarantee are allowed the additional access necessary.

2. Inmates in administrative segregation or protective custody shall be guaranteed 2 hours per week direct, personal access to a limited law library collection as indicated in Appendix B. In addition, on three days each week, such inmates may request five volumes to be brought to them from the main law library collection unless lent to another inmate. These volumes shall be delivered to these inmates on the next day that requests are collected and may be collected after the inmate has had their use for 24 hours.

3. Within 180 days after the implementation of this plan, the Department will provide in each main law library to the extent not currently provided each of the publications listed in Appendix B. Each publication shall be updated promptly as revised editions, pocket parts, or advance sheets become available. Periodically at six month intervals, defendants shall survey each collection to identify missing or mutilated volumes. All missing or mutilated volumes, however discovered to be missing or mutilated, must be replaced or restored promptly.

4. The Department shall take those measures necessary, if any, to implement their policy for treatment of privileged legal mail (including mail from federal, state and local courts, governmental agencies, and attorneys), which provides

that such mail will not be read, that upon the inmate's written demand, such mail will not be opened except in the presence of the inmate to whom the mail is addressed, and that such mail only may be opened to search for contraband. The policy further shall provide that inmates may seal all outgoing legal mail, which prison officials shall then cause to be posted unopened in the U.S. mail.

VI. Plans and Compliance

This plan provides for a number of plans that the Department shall submit at specified times. Each plan shall be submitted to the United States Department of Justice, Civil Rights Division, by the specified submission time. Each shall set forth a detailed statement of the measures that the Department will take to achieve timely compliance with

the plan along with a detailed timetable setting forth dates for interim and final compliance measures. Each plan also shall establish a method for continuing maintenance of each item to be accomplished pursuant to the plan. Upon submission, the United States shall review the plan. If there is no objection to the Department's proposed plan, the plan shall be appended to this plan. If the United States objects to the defendants' proposed plan, the parties shall attempt to conciliate any differences among them. To the extent useful and feasible, the United States may provide technical assistance in this conciliation process. If necessary, the United States may commence hearings concerning unresolved objections to proposed plans within 60 days of raising objections.

APPENDIX A: SANITATION PLANS

I. Housekeeping

A. The Assistant Deputy Warden for Housing in each institution is charged with the responsibility for the maintenance of clean and healthful conditions in prisoner living units.

1. At each institution, the Assistant Deputy Warden or designate of rank of captain or above shall conduct a monthly inspection of all prisoner living units and shall complete the appropriate monthly inspection report for review by the Warden. A follow-up procedure will be implemented to assure correction of any deficiencies noted in the report. Corrections will also be timely reported to the Warden for follow-up review.

2. The Assistant Deputy Warden or designate will assure that all staff in living units are appropriately trained in housekeeping techniques and instructed as to their individual responsibilities.

B. The Resident Unit Manager (RUM) for each living unit has direct supervisory responsibility for maintenance and housekeeping in the unit.

1. The RUM will assure that prisoners within the housing unit are informed that they are responsible for general housekeeping in their own cells, and will assure that each prisoner appropriately clean (sic) his cell on a routine basis.

2. The RUM will assure that appropriate cleaning supplies are

available at all times within the unit and will assure that each prisoner has access to cleaning supplies for his own cell.

3. The RUM will inspect all cells and common areas in the RUM's unit weekly and will complete inspection reports for review by the Assistant Deputy Warden for Housing or designate. Deficiencies will be monitored and corrected immediately. Any deficiencies beyond the control of the RUM will be reported to the Assistant Deputy Warden for Housing.

4. The RUM is responsible for the supervision of housing staff and inmate workers in the unit. The RUM may delegate responsibility

for housekeeping in specific areas to appropriate staff.

5. The RUM will assure that prisoner workers in the unit who are assigned to housekeeping of common areas will receive appropriate training for the tasks assigned and that these areas will be swept daily and showers will be mantained (sic) clean.

6. The RUM will assure that empty cells are clean before assignment to a prisoner.

C. Housing unit sergeants who report to the RUM, or at MBP the RUM in each housing unit, are responsible for supervision of day-to-day housekeeping tasks by officers and prisoner workers. Sergeants, or at MBP the RUM, maintain work schedules for prisoner workers and staff for all necessary tasks, and

assure these tasks are performed through inspection and follow-up.

D. Unit officers are assigned to specific areas in the unit for purposes of housekeeping and sanitation, and are directly responsible for the instruction and supervision of prisoner workers as to cleaning procedures and for the provision of suppleis (sic) and equipment in these areas. Officers assure that personal cells in assigned areas are maintained in a sanitary condition by their occupants.

E. The Assistant Deputy Warden for Housing will develop a plan appropriate to the individual institution to accomplish all housekeeping goals set forth herein including for ongoing cell painting and to assure that all cells are refurbished on a regular basis.

II. Personal Hygiene of Prisoners

A. Mattresses - Defendants shall provide each prisoner moving into a cell with a sanitized mattress and pillow and with a freshly laundered blanket. No prisoner shall be assigned to a cell lacking a sanitized mattress and pillow or lacking a freshly laundered blanket.

B. Bedding and Towels - Each prisoner shall be provided with clean bed linen (including, without limitation, two sheets and one pillowcase) once per week. A blanket shall be provided to each prisoner and laundered every three months. A clean towel shall be provided to each prisoner at least three times per week.

C. Each prisoner shall be afforded the opportunity to shower at least three times per week. It is the policy of the Michigan Department of Corrections that no prisoner may be asked to forego exer-

cise as required herein, employment, assigned programs or meals in order to avail himself of a shower. This policy shall be continued. Shower time shall be of adequate duration, at least 5 minutes physically in the shower.

D. Each prisoner, upon entry into the correctional system, is provided with soap, toothbrush, toothpaste or powder, comb and toilet paper. Prisoners shall continue to receive these items upon entry. Thereupon, each prisoner who is indigent shall continue to be provided these items as needed as well as shaving equipment, shaving soap or depilatories as needed. All other prisoners will have access to materials for personal hygiene for purchase at resident stores on a regular basis. The state shall make available for purchase or use nonelectric sanitary shaving

equipment, shaving soap or an appropriate depilatory. Inmates shall not be asked to use shaving equipment used by other inmates unless sanitary.

E. All clothing including personal clothing, linens, and bedding, shall be laundered so as to meet institutional laundry standards such as those of the International Fabricare Institute.

III. Vermin Control

A. Each institution has a contract with commercial pest and vermin control companies for periodic preventive maintenance in both food service and housing areas.

1. Food Service Supervisors are responsible for day-to-day inspection of food service areas, including commissaries and other food storage areas, for evidence of vermin (as well as birds) and

shall assure immediate control should problems develop. Appropriate inventory techniques for food storage are already in place and will be constantly monitored by Food Service Supervisors in order to prevent infestation, as well as spoilage.

2. In housing units, Resident Unit Managers are specifically charged with weekly inspection for evidence for vermin (as well as birds) and corrective action should such evidence be apparent.

B. The Environmental Sanitarians are specifically designated to inspect the food service areas as well as housing units for evidence of vermin (as well as birds) on a monthly basis. Any evidence of vermin (as well as birds)

will be brought to the attention of the appropriate supervisor by the Sanitarian for remedy. All measures necessary to assure eradication and control of such vermin and birds, including additional or different professional, commercial, fully licensed pest control, shall be taken promptly. Any serious infestation will be reported to the Assistant Deputy Warden for immediate control measures.

C. Informal education of prisoners and staff in sanitary housekeeping techniques and control of perishables in prisoner living areas will be continual in order to prevent, so far as possible, the introduction of vermin.

D. Prisoner workers will continue to be trained in eradication techniques under the supervision of staff to supplement contract services for vermin control.

APPENDIX B

MINIMUM COLLECTION FOR MAIN LAW LIBRARIES

MICHIGAN MATERIALS

1. Michigan Compiled Laws Annotated

   (Vol. 1-2, 38-39, 40-41)

   OR

   Michigan Statutes Annotated

   (Vol. 1, 24, 24A, 25, 25A)

2. Michigan Digest (West) (all)

   OR

   Michigan Digest (Callaghan) (all)

3. Michigan Supreme Court Reports

   (Vol. 358 (1960) to the present plus subscription to advance sheets)

4. Michigan Appeals Reports (Vol. 1 to the present plus subscription to advance sheets)

5. Shepard's Michigan Citations (all)

6. Gillespie - Michigan Criminal Law and Procedure (all)

7. Honigman and Hawkins - Michigan

Court Rules Annotated (all)

8. Michigan Criminal Jury Instructions (all)

9. Hensel - Appeals in the Michigan Courts

FEDERAL MATERIALS

1. United States Code Annotated (Constitution volumes, Titles 18, 28, 42)

2. Supreme Court Reporter (From Vol. 80 (1959) to the present plus subscription to advance sheets)

OR

United States Supreme Court Reports, Lawyers' Edition, 2nd Series (From Vol. 4 (1959) to the present plus subscription to advance sheets)

3. Federal Reporter, 2nd Series (From Vol. 300 (1962) to the present plus subscription to advance sheets)

4. Federal Supplement (From Vol. 200

(1961) to the present plus subscription to advance advance sheets)

5. Federal Practice Digest, 2d (all)
6. Shepard's United States Citations (all)
7. Shepard's Federal Citations (all)
8. Wright - Federal Practice and Procedures (Vols. 1, 2 & 3 (Criminal))
9. Sokol - Federal Habeas Corpus (latest edition)

GENERAL MATERIALS

1. Corpus Juris Secundum (22, 22A, 23, 23A, 24, 24A, 24B (Vols. covering Criminal Law))
2. Black - Black's Law Dictionary, Revised 4th Ed. (1968)

OR

Ballentine - Ballentine's Law Dictionary, 3d Ed. (1969)

3. Cohen, M. - Legal Research in a Nutshell (latest edition)

OR

Elias - Legal Research: How to Find and Understand the Law

4. Bailey and Rothblatt - Complete Manual of Criminal Forms, 2nd Ed (2 volumes)
5. Israel and LaFave - Criminal Procedure in a Nutshell, 2d Ed. (1975)
6. Criminal Law Reporter
7. Rubin - Law of Criminal Correction, 2nd Ed. (1973)
8. Werner - Manual for Prison Law Libraries (1976)
9. Dorsen, N. - The Rights of Prisoners (1973)

OR

Rudowsky, D. - The Rights of Prisoners (1973)

OR

Palmer, J.W. - Constitutional Rights of Prisoners (1977)

10. LaFave, W.R. - Principles of Criminal Law (1978)

OR

LaFave and Scott, Handbook in Criminal Law (1972)

OR

Loewy, A.R. - Criminal Law in a Nutshell, 2nd Ed. (1972)

MINIMUM COLLECTION FOR ADMINISTRATIVE SEGREGATION LAW LIBRARIES

1. Michigan Compiled Laws Annotated (Vol. 1-2, 38-39, 40-41)

OR

Michigan Statutes Annotated (Vol. 1. 24, 24A, 25, 25A)

2. A treatise on Michigan criminal law and procedure;
3. Superceded "advance sheets" of Shepard's Citations (United States, Federal, and Michigan);
4. A treatise (e.g., Nutshell series)

on prisoners' rights;

5. A treatise on habeas corpus;
6. A general treatise on criminal law and on criminal procedure;
7. A legal dictionary;
8. Federal rules of civil and criminal procedure;
9. A Michigan Resident Guidebook; and
10. A list of the main law library holdings as periodically updated.

(2)

Supreme Court, U.S.
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No. 93-2042

In the Supreme Court of the United States

OCTOBER TERM, 1994

STATE OF MICHIGAN, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the parties' stipulation that a State and its officials fulfilled their constitutional obligations under most provisions of a prison-conditions consent decree divested the district court of jurisdiction to determine whether compliance was actually achieved before dismissing certain decree provisions.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-19a) is reported at 18 F.3d 348. The opinions of the district court (Pet. App. 30a-39a, 47a-60a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on March 4, 1994. A petition for rehearing was denied on March 24, 1994. The petition for a writ of certiorari was filed on May 31, 1994. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In 1984, following an investigation, the Attorney General determined that there was cause to believe that

petitioners were subjecting inmates in three of their correctional facilities to egregious or flagrant conditions in violation of the Constitution. The United States filed suit pursuant to the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. 1997 *et seq.* Pet. App. 87a-88a. In lieu of contesting the allegations, petitioners entered into a settlement embodied in a Consent Decree and incorporated State Plan for Compliance. Pet. App. 2a, 4a; *id.* at 87a-108a (Consent Decree), 109a-208a (State Plan). The Consent Decree and Plan covered three facilities: Marquette Branch Prison, Michigan Reformatory, and the State Prison of Southern Michigan. Those documents required improvements in the areas of medical care, fire safety, sanitation, safety and hygiene, crowding and protection from harm, and access to courts and legal mail. *Ibid.*

The stated purpose of the Consent Decree was "to assure the constitutionality of the conditions under which prisoners are incarcerated in the subject prisons." Pet. App. 88a-89a. The Plan set forth in detail the measures which the parties and the court deemed "adequate to bring [petitioners] into full compliance and thereby satisfy the terms and provisions of th[e] Decree." *Id.* at 99a. Petitioners expressly consented to the district court's ongoing jurisdiction. *Id.* at 105a-106a. The Decree called for continuous monitoring and periodic reporting to the court regarding compliance. *Id.* at 100a-101a, 102-103a. It also required notice to the court of "each failure to comply with the provisions of the State Plan," and provided for hearings regarding noncompliance "on request of either party or on the Court's own motion." *Id.* at 99a. No provision of the Decree or Plan could be modified without the court's approval. *Id.* at 106a, 100a.

The Decree provided for continued court jurisdiction until petitioners had complied with "all of the terms of th[e] Decree." Pet. App. 106a. At such time, the Decree provided, petitioners could "apply to terminate the jurisdiction of th[e] Court." *Ibid.* The court entered the Decree as its own judgment, and permanently enjoined the petitioners "from continuing the alleged unconstitutional practices and acts complained of; and * * * from continuing to confine persons under complained of unconstitutional conditions." *Id.* at 107a.

In 1992, after eight years of monitoring and periodic compliance hearings, the parties filed a joint motion pursuant to Federal Rule of Civil Procedure 60(b)(5) and (6) to dismiss most of the provisions of the Consent Decree, except those dealing with mental health. Pet. App. 2a-3a, 5a, 66a. In support of their motion the parties stipulated that "Defendants are in substantial compliance, and have achieved the goals of the Decree by assuring at least constitutional conditions" with respect to all areas apart from mental health care. *Id.* at 2a-3a, 5a, 61a. The parties also stipulated to a proposed modification of the Decree's jurisdiction provision. Under the Decree as written, termination of the court's jurisdiction was "an all or nothing matter," *id.* at 5a, such that the court retained jurisdiction over the whole decree until all of its terms were met. The proposed modification would have allowed either party to seek earlier, piecemeal release from those Decree provisions governing areas where "compliance with constitutional requirements" had been achieved. *Id.* 5a-6a, 62a.

2. a. The district court granted in part and deferred decision in part on the parties' stipulation and motion to dismiss. Pet. App. 6a-9a, 24a, 40a-41a. The court accepted the parties' proposal that partial dismissal of the Consent Decree be allowed where compliance with

discrete portions is shown, and therefore vacated the sentence of the Decree requiring compliance with all the Decree's terms prior to termination of the court's jurisdiction as to any portion. *Id.* at 6a-7a, 41a, 50a-51a. It did not accept the precise wording of the parties' substitute, however, which was framed in terms of "compliance with constitutional requirements" in the abstract, *id.* at 62a, as opposed to compliance with the Decree. The court explained:

> The Court is not opposed, in principle, to the partial dismissal of portions of the Consent Decree when the Defendants have achieved a satisfactory level of compliance with the portions involved and when the portions can be clearly severed from other portions of the Decree that will remain in force. However, the Court believes that the approach to determining compliance proposed by the parties un[n]ecessarily complicates matters by requiring constitutionally grounded justifications for terminating portions of the Decree, when all that may be necessary are assertions of compliance with the terms of the Decree, with evidence of compliance where necessary.

Id. at 50a-51a. The court nonetheless invited the parties "to file future motions to modify or terminate portions of the Decree or its associated plans." *Id.* at 53a.[1] Such motions, the court specified, could set forth "the parties'

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[1] The court referred to "plans" in the plural because the Decree required petitioners to submit supplemental plans at specified times in addition to the original State Plan for Compliance, and required that the supplemental plans be "appended to the State Plan and subject to enforcement in accordance with the provisions of th[e] Decree." Pet. App. 101a-102a.

positions concerning constitutional requirements." *Id.* at 46a.

Before dismissing any portion of the decree, the district court sought an updated review and report regarding compliance. Pet. App. 7a, 43a-44a, 53a-54a. The court observed that evidence to support the parties' assertions of partial compliance "may not, in some instances, be current." *Id.* at 53a. The court called upon the Independent Expert, who had been appointed by the court to assist in monitoring the Decree, to review the provisions of the Decree and to list those that had been fully satisfied, and also to determine the relationship, if any, between the satisfied provisions and those still unfulfilled. *Id.* at 7a, 44a-45a. It provided an opportunity for the parties and *amici* to comment on the Independent Expert's list. *Id.* at 45a.

The court's July 2, 1992, order also established a sequence for consideration of the parties' joint motion seeking dismissal of aspects of the Decree. Pet. App. 55a-59a. It held the motion in abeyance insofar as it sought to dismiss medical care provisions, on the ground that those provisions should be considered jointly with the mental health care aspects, as to which the parties agreed compliance had not been achieved. *Id.* at 41a-42a, 56a. The court noted that under the Decree, "Medical Care compliance has always been considered in conjunction with Mental Health Care compliance. The reason for joint consideration is that mental health care, as a form of medical care, is inextricably related to medical care." *Id.* at 56a.

The court further specified that the first round of compliance investigations and actions on the motion to dismiss should relate only to the Marquette Branch Prison and the Michigan Reformatory. Pet. App. 8a, 59a. It held the motion in abeyance insofar as it related to the

State Prison of Southern Michigan (SPSM), the largest of the three facilities. *Id.* at 42a, 57a-59a. The court recognized that "a complete assessment of compliance at [SPSM], which is a massive prison complex housing over 5,000 prisoners, will require a substantial commitment of time and resources by the parties." *Id.* at 57a. Moreover, the court noted that petitioners were involved in implementation of a consent decree in a separate case brought by private parties also addressing conditions at SPSM, *Hadix* v. *Johnson*, No. 80:CV:73581 (E.D. Mich.), which the court predicted "may constitute a substantial change in physical and operational conditions at SPSM that would warrant dismissal" of Decree provisions in this case. *Id.* at 57a-58a. The court thus decided to stay temporarily its final compliance assessment of SPSM. *Id.* at 42a, 58a-59a.

b. On December 1, 1992, following receipt and review of the Independent Expert's list, the court dismissed the first set of provisions as to which it was satisfied compliance had been shown. Pet. App. 23a-29a. The court found compliance with selected provisions of the State Plan regarding sanitation, safety and health, fire safety, and overcrowding and protection from harm at the Marquette Branch Prison and the Michigan Reformatory, and dismissed those provisions. *Id.* at 10a, 34a-37a. The court continued to hold the motion to dismiss in abeyance insofar as it addressed provisions governing access to the courts, however, in light of the fact that the State Plan required access only to law books, and recent decisions of the Sixth Circuit suggested that "meaningful access to the [c]ourts" may "require assistance beyond law books and simplified pleading forms." *Id.* at 37a; see *id.* at 27a, 10a-11a. The court called for further reports on the provisions it had not yet dismissed. *Id.* at 11a, 28a.

3. Without waiting for the district court to complete its review of the joint motion to dismiss, petitioners appealed. The court of appeals affirmed. The court rejected petitioners' contention that the district court was bound by the parties' stipulation of compliance and lacked jurisdiction independently to review whether the requirements of the Consent Decree had been met. Pet. App. 3a, 12a. The court emphasized that a Consent Decree is both a voluntary settlement and a judicial order subject to "continued judicial policing." *Id.* at 12a, quoting *Lorain NAACP* v. *Lorain Bd. of Educ.*, 979 F.2d 1141, 1148 (6th Cir. 1992), cert. denied, 113 S. Ct. 2998 (1993). Because the court places its "power and prestige" behind a consent decree,

> a district court is not simply empowered, but is actually obligated, to exercise its independent judgment regarding compliance with a decree. Otherwise, a court would simply become a rubber stamp for the parties, and the policing role of the court would become meaningless.

Pet. App. 13a. "Once entered, the decree became the *court's* judgment, subject to its monitoring." *Ibid.* A stipulation of the parties to the decree thus "does not deprive a court of its inherent supervisory authority under Fed. R. Civ. P. 60(b)." *Id.* at 15a.

The court of appeals also rejected petitioners' contention that the district court exceeded its authority by referring to the State Plan in determining whether petitioners had achieved compliance with their constitutional obligations under the decree. Pet. App. 16a-19a. The court held that the procedure the district court employed in considering the motion to dismiss "conform[ed] to the modification provisions of the decree and with existing law." *Id.* at 19a. The court of appeals

explained that because "[t]he state plan is an integral and important component of the consent decree," which "provides a detailed, concrete way to satisfy the broad goals laid out in the decree," *id.* at 17a, and "[t]he plain language of the consent decree provides that compliance with the state plan would be considered compliance with the Constitution," *id.* at 16a, the district court was entitled to "first review compliance under the plan," *id.* at 18a. "[S]ince compliance had always been measured against the state plan," the district court appropriately found the Plan "was the easiest place to begin." *Id.* at 18a.

The court of appeals emphasized, however, that the district court neither "require[d] compliance with all the terms of the plan," Pet. App. 18a, nor suggested "that compliance with the state plan [was] the only means to satisfy compliance with the Constitution," *id.* at 16a-17a. Rather, the court was following a two-step procedure, first dismissing provisions of the decree for which it found compliance under the Plan, and then entertaining motions regarding the remaining provisions. "In these motions, the parties could argue the relevant constitutional standards and show that compliance with the full terms of the plan should not be required." *Id.* at 19a. The court of appeals concluded that if petitioners wish "to argue that the plan goes too far and that constitutional requirements have already been met, [they] should first raise these issues in the district court, following the procedure provided by that court and the consent decree." *Ibid.*

ARGUMENT

1. Petitioners contend that the district court was obligated immediately upon receipt of the parties' stipulation of partial compliance with the Consent

Decree to dismiss every provision of the Decree except the mental health provisions, as to which the parties stipulated noncompliance. Pet. 32-54. In petitioners' view, the district court exceeded its authority by seeking independently to confirm the accuracy of the parties' stipulation, and to make its own legal determination regarding which Decree provisions to sever and dismiss and which to preserve pending full compliance with remaining obligations.

No party asserts that the district court lacked the power to grant in full the motion to modify the Decree by dismissing certain aspects of it; indeed, the district court had devised procedures and a schedule, and appeared to be in the process of granting the motion when petitioners appealed. We cannot agree with petitioners, however, that the parties' stipulation divested the district court of its inherent authority and duty to satisfy itself, before granting the requested modifications, that obligations of the Decree had actually been discharged such that the requested modifications were warranted. Nor do we believe that the district court lacked discretion to tailor the appropriate modification.

The district court correctly retained jurisdiction and exercised its discretion to review the parties' stipulation and motion to dismiss. Consent decrees are "subject to continuing oversight and interpretation by the court." *Local No. 93, Int'l Ass'n of Firefighters* v. *City of Cleveland*, 478 U.S. 501, 523 n.13 (1986). The district court has the power to enforce and modify them, see *Rufo* v. *Inmates of Suffolk County Jail*, 112 S. Ct. 748 (1992), and to determine when they should be terminated, or whether jurisdiction over them should be relinquished in stages, because their objectives have been achieved in full or in part, see *Freeman* v. *Pitts*, 112 S. Ct. 1430, 1445-1446 (1992). Termination of consent decree pro-

visions under Federal Rule of Civil Procedure 60(b) calls for an exercise of sound judicial discretion in light of all the circumstances. See *Rufo*, 112 S. Ct. at 758; *id.* at 765 (O'Connor J., concurring); *Freeman*, 112 S. Ct. at 1446 (describing factors courts should consider). Where modification is warranted, it is the duty of the court to "consider whether the proposed modification is suitably tailored" to the circumstances that justified it. *Rufo*, 112 S. Ct. at 760.

Petitioners' effort to treat the stipulation as definitive and to remove the district court from the process of closing this case conflicts with the binding terms of the Decree itself. The parties voluntarily specified that the district court would have the authority to determine the circumstances under which the Decree could be modified or terminated. The parties were required to apply to the district court for dismissal of the Decree. Pet. App. 15a. The Decree forbade modification of the terms of the Decree or Plan without the court's approval. *Ibid.*; see *id.* at 100a, 106a.

The district court's independent review is especially warranted to protect the public's interest in the Decree in this case, because decrees in "institutional reform litigation" such as this "reach beyond the parties involved directly in the suit and impact on the public's right to the sound and efficient operation of its institutions." *Rufo*, 112 S. Ct. at 759, quoting *Heath* v. *DeCourcy*, 888 F.2d 1105, 1109 (6th Cir. 1989). The existence of a stipulation by the parties, like a prosecutorial confession of error, "do[es] not 'relieve [a] [c]ourt of the performance of the judicial function.'" *Sibron* v. *New York*, 392 U.S. 40, 58 (1968), quoting *Young* v. *United States*, 315 U.S. 257, 258 (1942). The district court acted properly in retaining jurisdiction to evaluate a stipulation and motion that had potentially

far-reaching effects on the prison population whose rights the Decree obligated the court to protect.[2]

2. Petitioners assert that they are required only to comply with the Constitution, and not with any aspect of the Plan that may create obligations beyond what the court could have imposed as a remedy if the case had been litigated and constitutional violations found. Pet. 47-57. They contend, in effect, that the district court overreached by considering, as one step in its review of the parties' stipulation and motion to dismiss, whether petitioners have complied with the State Plan they themselves had agreed to as part of the Decree.

That contention is hypothetical. The provisions of the Decree and Plan are confined to remedying consti-

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[2] Petitioners argue that the court of appeals' decision is inconsistent with this Court's decisions in *New Hampshire* v. *Maine*, 426 U.S. 363 (1976); *Vermont* v. *New York*, 417 U.S. 270 (1974) (per curiam), and *Pasadena City Bd. of Educ.* v. *Spangler*, 427 U.S. 424 (1976). Pet. 32-36, 44. *New Hampshire* and *Vermont* both dealt with circumstances under which States' agreements with one another may be entered as consent decrees; neither addressed the proposed dismissal of all or part of a decree under Federal Rule of Civil Procedure 60(b). *Vermont* actually provides support for the district court's action here, because the Court refused to approve a proposed consent decree, the execution of which would have required the Court to "act[] more in an arbitral rather than a judicial manner." 417 U.S. at 276-277.

In *Spangler*, "[n]o one dispute[d] that the initial implementation of th[e student reassignment] plan accomplished th[e] objective" of the consent decree "of providing the appropriate remedy for previous racially discriminatory attendance patterns." 427 U.S. at 436-437. The parties here, in contrast, never contended that all objectives of the decree had been accomplished. Moreover, this Court declined in *Spangler* to dissolve the injunction or terminate the district court's jurisdiction, but remanded to the lower courts, which are, as an initial matter, "in a far better position" to determine whether to do so. *Id.* at 440-441.

tutional violations. See *United States* v. *Michigan*, 940 F.2d 143, 147 (6th Cir. 1991) (describing Consent Decree, including Plan, as tailored to address only conditions of confinement rising to the level of constitutional violations). As the court of appeals noted, "[t]he plain language of the consent decree provides that compliance with the state plan would be considered compliance with the Constitution," and "[t]he plan provides a detailed, concrete way to satisfy the broad goals laid out in the decree." Pet. App. 16a-17a. Petitioners have not identified any aspect of the Plan calling for corrective action exceeding that which is appropriate to remedy the asserted constitutional violations.[3]

Petitioners' contention is also premature. As the court of appeals held, if petitioners wish "to argue that the plan goes too far and that constitutional requirements have already been met, [they] should first raise these issues in the district court." Pet. App. 19a. The district court's schedule for reviewing the motion to dismiss provided an opportunity for the parties to do so, *id.* at 19a, 46a, but petitioners chose not to take advantage of it. Instead, they sought appellate review before the district court had completed its adjudication of the motion. The district court has yet to deny any aspect of the motion on any ground, including any failure by petitioners to comply with the State Plan. In the absence of final disposition of the parties' motion in an order appealable under 28 U.S.C. 1291 or 1292, it is

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[3] Having devised and agreed to the Plan themselves, petitioners are ill positioned to object to the district court's use of the Plan as a benchmark. Indeed, an injunctive decree that is specific (as here), going beyond reciting a general duty to comply with the Constitution, is generally viewed as beneficial to defendants by providing notice of and concrete definition to their obligations.

highly doubtful that the court of appeals had jurisdiction of petitioners' appeal at this juncture. See *Cohen* v. *Beneficial Loan Corp.*, 337 U.S. 541, 546 (1949). In any event, review by this Court would be premature.

Finally, petitioners' theory has already been rejected by this Court. "[S]tate and local officers in charge of institutional litigation may agree to do more than that which is minimally required by the Constitution to settle a case and avoid further litigation." *Rufo*, 112 S. Ct. at 764; see *id.* at 762-763. See also *Local No. 93, Int'l Ass'n of Firefighters*, 478 U.S. at 525 ("a federal court is not necessarily barred from entering a consent decree merely because the decree provides broader relief than the court could have awarded after a trial").[4] Faced with a motion to modify a decree that may in some respects exceed the constitutionally required minimum, the court "should not strive to rewrite [the decree] * * * so that it conforms to the constitutional floor." *Rufo*, 112 S. Ct. at 764.

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[4] The "consent decree must," of course, " 'com[e] within the general scope of the case made by the pleadings,' and must further the objectives of the law upon which the complaint was based." *Local No. 93, Int'l Ass'n of Firefighters*, 478 U.S. at 525 (citations omitted).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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(3)

No. 93-2042

In the Supreme Court of the United States
October Term, 1993

STATE OF MICHIGAN, et al,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

REPLY BRIEF OF PETITIONERS

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10 pp

QUESTION PRESENTED

Where The United States And The State Stipulate That The State Is In "Substantial Compliance" With A Prison Reform Consent Decree Entered As The Judgment Of The Court Pursuant To The Civil Rights Of Institutionalized Persons Act (CRIPA) And Has "Achieved The Goal Of The Decree By Assuring At Least Constitutional Conditions," After Eight Years Of Monitoring, Did The District Court Exceed Its Authority By Refusing To Grant The Parties' Joint Motion To Dismiss Portions of the Consent Decree?

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STATEMENT OF THE CASE

Petitioners incorporate by reference the statement of the case contained in the petition. This reply brief is necessary because of several inaccuracies in the Respondent's brief in opposition to the petition.

ARGUMENT

I.

Petitioners' Claims Are Neither Hypothetical Nor Premature.

Respondent correctly acknowledges that one aspect of Petitioners' challenge focuses on the ruling that Petitioners must comply with all of the detailed provisions of the State Plan above and beyond complying with the requirements of the Constitution. Respondent erroneously asserts that this concern is hypothetical, however, because "The provisions of the Decree and Plan are confined to remedying constitutional violations." Brief opposing petition, pp 11-12. If that were true, Petitioners would have no basis for their challenge, but the plain fact is that the provisions of the State Plan go

far beyond what is required by the constitution, and the Consent Decree specifically provided that compliance with the constitutional requirements of the Consent Decree did not require full implementation of all the terms of the State Plan (App to Pet 99a-100a):

> Nothing in this Decree shall be interpreted as requiring Defendants to specifically comply with any State law, or any other provision of the State Plan that does not implicate constitutional rights of inmates.

Compliance with the State Plan would be sufficient to demonstrate compliance with the constitution (App to Pet 99a), but contrary to the District Court's orders and Respondent's current assertions, compliance with the State Plan is not necessary for compliance with the constitution.

Respondent also contends that Petitioners' contentions are premature and they say:

> The district court has yet to deny any aspect of the motion on any ground, including any failure by petitioners to comply with the State Plan. In the absence of final disposition of the parties' motion in an order appealable under 28 U.S.C. 1291 or 1292, it is highly doubtful that the court of appeals had jurisdiction of petitioners' appeal at this juncture.

Brief opposing petition, pp 12-13.

This extraordinary statement is inexplicable in light of the District Court's order of March 30, 1993 (App to Pet 21a-22a): "IT IS FURTHER ORDERED that defendants motion to dismiss portions of the consent decree filed April 29, 1992 (dkt. #1679) is DENIED without prejudice."

Because the orders involved injunctions, they were appealable to the Court of Appeals pursuant to 28 USC § 1292(a)(1).

The petition presents issues which are both concrete and timely.

II.

Petitioners Do Not Contend That The District Court Was Without Jurisdiction.

Respondent's statement of the question presented distorts the question presented by the petition. Petitioners do not challenge the District Court's jurisdiction; we challenge the incorrect exercise of the Court's authority and its decision to engage in unilateral judicial factfinding in derogation of the stipulation of the parties. We

reiterate what was said at pp 55-57 of the petition:

> Michigan does not suggest that the District Court is merely a rubber stamp without any authority to make an independent evaluation of the parties' joint motion. Michigan submits that the District Court did not make an independent evaluation of whether provisions of the Consent Decree should be dismissed; to the contrary, the Court's orders ignore the Consent Decree and the requirements of the Constitution and focus exclusively -- and improperly -- on minutiae of the State Plan which are not connected to the constitutionality of conditions in the prisons. Michigan submits that the Court of Appeals erred in balancing the court's authority against the wishes of the parties and the requirements of the Decree, especially in light of this Court's repeated exhortations against undue interference by federal courts in state prison operations and the fact that remedies are strictly limited by CRIPA and the terms of the Consent Decree solely to curing constitutional violations. Williams v Vukovich, 720 F2d 909, 923 (CA 6, 1983), indicates that the court's authority is limited to determining whether the parties' agreement is illegal, a product of collusion or contrary to the public interest; Bell v Wolfish, 441 US 520, 548, 99

S Ct 1861, 60 L Ed 2d 447 (1979), counsels in favor of deference to state officials in the absence of "substantial evidence in the record" of unconstitutional action; and New Hampshire v Maine, 426 US 363, 369, 96 S Ct 2113, 48 L Ed 2d 701 (1976), permits implementation of the parties' agreement when the agreement "reasonably invest[s] imprecise terms with definitions" and there is nothing to suggest that the agreement "is wholly contrary to relevant evidence."

Under any such formulation, the District Court exceeded its authority when it refused to grant the parties' joint motion.

III.

Petitioners Do Not Seek To Rewrite The Decree.

In addition to repeatedly mischaracterizing Petitioners' claims and the nature of the District Court's orders, Respondent also misstates the terms of the Consent Decree. Only two paragraphs after correctly asserting that "the pro-

visions of the Decree and the Plan are confined to remedying constitutional violations" (brief opposing petition, pp 11-12), Respondent incorrectly asserts that the Decree "may in some respects exceed the constitutionally required minimum" (brief opposing petition, p 13). Petitioners readily acknowledge that state officials may agree in a consent decree to do more than that which is minimally required by the Constitution. Rufo v Inmates of Suffolk County Jail, ___ US ___, 112 S Ct 748, 116 L Ed 2d 867 (1992). Contrary to Respondent's current assertions and contrary to the District Court's orders, however, the Consent Decree in the instant case leaves no doubt that Petitioners agreed only to comply with the constitution and not

some higher standard. The Decree provides (App to Pet 88a-89a, 99a-100a):

> The provisions of the Decree are intended by the parties to assure the constitutionality of the conditions under which prisoners are incarcerated in the subject prisons. * * * Nothing in this Decree shall be interpreted as requiring Defendants to specifically comply with any State law, or any other provision of the State Plan that does not implicate constitutional rights of inmates.

Respondent attempts to distinguish Pasadena City Board of Education v Spangler, 427 US 424 (1976), on the grounds that the parties to the instant case, supposedly unlike the parties in Spangler, "never contended that all objectives of the decree had been accomplished" and that this Court did not grant relief in Spangler. (Brief opposing petition, p 11, n. 2).

Respondent is simply wrong on both of these points. In Spangler the petitioner sought four types of relief, one of which was discussed--and granted--by this Court. There was apparently agreement of the parties that one objective of the remedial plan had been achieved but there was dispute as to other points. 427 US at 436 ("There has been, for example, dispute as to the petitioners' compliance. . . ."). In the instant case the parties' stipulation did not reach every aspect of the Consent Decree, but there is no doubt concerning the parties' agreement with respect to the areas covered by the stipulation, App to Pet 62a-63a:

> The parties now agree and stipulate that Defendants are in substantial compliance with the Consent Decree and have achieved the goal of the Decree by assuring at least constitutional conditions with respect to:

> medical care; fire safety; sanitation, safety and hygiene; crowding and protection from harm; and access to courts and legal mail.

Contrary to Respondent's assertion that the petitioners in Spangler did not obtain relief, this Court said, 427 US at 440: "Instead, we think petitioners were entitled on this phase of the case to a judgment of the Court of Appeals reversing the District Court with respect to its treatment of that portion of the order." That is all the instant Petitioners seek.

RELIEF SOUGHT

WHEREFORE, this Court should grant certiorari to review the decision of the Court of Appeals for the Sixth Circuit and rule that the District Court exceeded its authority in refusing to grant the parties' joint motion to dismiss portions of the Consent Decree where the parties stipulated that there had been substantial compliance and that the goal of assuring at least constitutional conditions had been achieved.

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